

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
4

5 - - - - -X

6 IN THE MATTER OF: :
7 HRH Services, LLC: Case # 16-CMP-00503/00600
8 t/a The Alibi :
9 237 2nd Street NW :
10 License #97969 :
11 Retailer CR :
12 ANC 6C :
13 Failed to Comply Board Order :

14 - - - - -X

15 Wednesday, March 15, 2017
16

17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.
21

1 BOARD MEMBERS PRESENT

2 DONOVAN ANDERSON, CHAIRMAN

3 NICK ALBERTI, BOARD MEMBER

4 JAMES SHORT, BOARD MEMBER

5 JAKE PERRY, BOARD MEMBER

6 MAFARA HOBSON, BOARD MEMBER

7 MIKE SILVERSTEIN, BOARD MEMBER

8

9 ALSO PRESENT:

10 WALTER ADAMS

11 ANN DANIELS

12 BRENDAN KLAPROTH

13 MARK BRASHEARS

14 RACHEL TRAVERSO

15

16

1 P R O C E E D I N G S

2 SHOW CAUSE HEARING

3 CHAIRPERSON ANDERSON: We now move to our
4 show cause calendar. The first case on our show
5 cause calendar is Case #16-CMP-00503, The Alibi,
6 license #97969. There is a companion case, case
7 #16-CMP-00600, The Alibi, license #97969. Will
8 the parties please approach and identify
9 themselves for the record, please?

10 MR. ADAMS: Good morning, Mr. Chairman,
11 Walter Adams representing the District of
12 Columbia.

13 CHAIRPERSON ANDERSON: Good morning, Mr.
14 Adams.

15 MS. DANIELS: Good morning, Ann Daniels on
16 behalf of the District of Columbia.

17 CHAIRPERSON ANDERSON: Good morning, Ms.
18 Daniels.

19 MR. KLAPROTH: Good morning, Mr. Chairman and
20 members of the board, Brendan Klaproth on behalf
21 of The Alibi.

22 MS. TRAVERSO: Ann Rachel Traverso, the owner

1 of The Alibi.

2 CHAIRPERSON ANDERSON: Good morning, Ms.

3 Traverso. Give me your name again.

4 MR. KLAPROTH: That's Klaproth, K-L-A-P-R-O-

5 T-H.

6 CHAIRPERSON ANDERSON: Thank you, good

7 morning. There are two separate cases so tell me

8 how we're going to move toward them. Do we need

9 two separate cases and you present one case for

10 us and then present the second one? Or, tell me

11 how we're going to do this.

12 MS. DANIELS: Mr. Chairman, the District

13 would prefer to combine those matters in the

14 interest of time and due to the fact that both

15 incidents arise out of the same board order and

16 the District will have the same witness for both

17 cases, but it is up to the board and counsel.

18 CHAIRPERSON ANDERSON: Mr. Klaproth.

19 MR. KLAPROTH: The Alibi consents to

20 consolidate both cases.

21 CHAIRPERSON ANDERSON: But there are going to

22 be two separate decisions issued because they are

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1 two different cases, but we'll hear the same
2 facts. Like I said, they are the same facts but
3 they are two separate -- when any decisions are
4 issued then I guess in conclusions you're going
5 to basically say what should be found on the
6 first case and then what -- okay. Prior to
7 moving forward, are there any preliminary matters
8 in this case?

9 MS. DANIELS: Not from the District, your
10 Honor.

11 MR. KLAPROTH: Not from The Alibi, Mr.
12 Chairman.

13 CHAIRPERSON ANDERSON: Does the government
14 wish to make an opening statement?

15 MS. DANIELS: Yes, Mr. Chairman. Before
16 that, the District just wants to clarify how many
17 witnesses that the opposing side will have.

18 CHAIRPERSON ANDERSON: Mr. Klaproth?

19 MR. KLAPROTH: We'll have two but believe
20 there's going to be overlap. Mr. Brashears, or
21 Investigator Brashears, as well as Investigator
22 Collins. I'm not sure if she's here but we did

1 request that she appear.

2 MR. SILVERSTEIN: Mr. Klaproth, would you
3 please move your microphone so you can be heard.

4 MR. KLAPROTH: Closer?

5 MS. DANIELS: Mr. Chairman and members of the
6 board, this case -- these two cases have simple
7 facts. This board issued an order titled 2016-230
8 on May 18, 2016, granting a CR license to this
9 establishment. This order attached certain
10 conditions to this license that this
11 establishment was required to comply with at all
12 times. In sum, these conditions centered on the
13 prohibition of Martin Scahill, a former licensee,
14 from being present on the premises being involved
15 in the establishment on any level from employment
16 to volunteering and if and when Mr. Scahill was
17 present at the establishment this establishment
18 must notify the Metropolitan Police Department of
19 such violation.

20 You will learn today, through the testimony
21 of the District's witness, ABRA investigator,
22 Mark Brashears, that this establishment, through

1 its owner, violated the conditions of this board
2 order and the conditions placed on this
3 establishment's license. We will learn through
4 the testimony of Investigator Brashears that on
5 June 10, 2016, he visited the establishment after
6 receiving a complaint that Mr. Scahill was
7 present at the establishment. The evidence will
8 show that investigator Brashears observed Mr.
9 Scahill at the sidewalk café sitting and engaging
10 with this establishment's owner, Ms. Traverso.
11 The evidence will show that Ms. Traverso did not
12 tell Mr. Scahill to leave this establishment
13 until approached by investigator Brashears and
14 until Investigator Brashears identified himself
15 as an ABRA investigator. The evidence will show
16 that Investigator Brashears in addition observed
17 Mr. Scahill carrying dishes into the kitchen in
18 violation of this board's order. At no time did
19 Ms. Traverso call the Metropolitan Police
20 Department to report Mr. Scahill's presence.

21 At the end of this hearing, the District will
22 ask you to find the establishment in violation of

1 D.C. Code § 25-823(c), for which this board may
2 take action under D.C. Code § 25-823(a)(6).

3 You will also learn that Investigator
4 Brashears on July 8, 2016, after receiving
5 another complaint that Mr. Scahill was at the
6 establishment, you will learn that Investigator
7 Brashears visited the establishment and viewed
8 Mr. Scahill through the window of the
9 establishment near the bar in violation of this
10 board's order. You will also learn that when
11 Investigator Brashears knocked on the door, the
12 door was locked and a female employee approached
13 Investigator Brashears. The evidence will show
14 that when the female employee opened the door,
15 she confirmed that Mr. Scahill was present at the
16 establishment. You will also learn through
17 Investigator Brashears that after he identified
18 himself as an ABRA investigator to this female
19 employee and entered the establishment, Mr.
20 Scahill was not there and Ms. Traverso, who was
21 there, denied his presence. At no time did Ms.
22 Traverso or another employee call the

1 Metropolitan Police Department to report Mr.
2 Scahill's presence.

3 At the end of the hearing we will ask you to
4 find this establishment in violation of D.C. Code
5 § 25-823(c), for which this board may take action
6 under D.C. Code § 25-823(a)(6).

7 CHAIRPERSON ANDERSON: Thanks, Ms. Daniels.
8 Mr. Klaproth, do you wish to make an opening
9 statement at this time?

10 MR. KLAPROTH: Yes, Mr. Chairman. As the
11 board is aware, there's pending litigation
12 challenging the conditions that are issued in
13 this case as well as an appeal challenging those
14 conditions. Notwithstanding both of those
15 pending litigations and cases, the District does
16 not have sufficient evidence to find today, or to
17 prove, that Mr. Scahill was present at the
18 location on June 10th or also on July 14th.
19 That's all right now.

20 CHAIRPERSON ANDERSON: All right, thank you.
21 Does the government wish to call its first
22 witness?

1 MS. DANIELS: Yes, Mr. Chairman. At this
2 time the District wishes to call Investigator
3 Brashears.

4 CHAIRPERSON ANDERSON: Mr. Brashears, can you
5 come forward, please? Can you raise your right
6 hand, please? Do you swear or affirm to tell the
7 truth and nothing but the truth?

8 INVESTIGATOR BRASHEARS: I do.

9 CHAIRPERSON ANDERSON: Have a seat, please.
10 Your witness, Ms. Daniels.

11 MS. DANIELS: Can you please state your full
12 name, spelling your last name, for the court
13 report?

14 INVESTIGATOR BRASHEARS: Investigator Mark
15 Brashears. B-R-A-S-H-E-A-R-S.

16 MS. DANIELS: And what is your occupation?

17 INVESTIGATOR BRASHEARS: I'm an investigator
18 employed by the Alcoholic Beverage Regulation
19 Administration .

20 MS. DANIELS: And how long have you been an
21 ABRA investigator?

22 INVESTIGATOR BRASHEARS: Approximately three

1 and a half years.

2 MS. DANIELS: What are your responsibilities
3 as an ABRA investigator?

4 INVESTIGATOR BRASHEARS: An ABRA investigator
5 conducts investigations and inspections of
6 licensed ABC establishments throughout the
7 District of Columbia.

8 MS. DANIELS: And as part of your
9 responsibilities do you receive complaints about
10 board licensed establishments?

11 INVESTIGATOR BRASHEARS: Yes, we do.

12 MS. DANIELS: And will you give an example of
13 the type of complaints that you receive?

14 INVESTIGATOR BRASHEARS: We receive noise
15 complaints, settlement agreement complaints,
16 board order complaints, just a whole variety of
17 them.

18 MS. DANIELS: And what typically happens
19 after you receive such complaints?

20 INVESTIGATOR BRASHEARS: Typically the
21 complaint will come in. It will be assigned to a
22 supervisor who then in turn assigns it to an

1 investigator to go out and check it out.

2 MS. DANIELS: And where did you work before
3 you were an ABRA investigator?

4 INVESTIGATOR BRASHEARS: I was an Air Force
5 OSI Special Agent for 16 years.

6 MS. DANIELS: What were your primary
7 responsibilities in that occupation?

8 INVESTIGATOR BRASHEARS: To investigate
9 crimes of Federal law.

10 MS. DANIELS: And in that position did you
11 receive any training or education regarding
12 interviewing witnesses or suspects?

13 INVESTIGATOR BRASHEARS: Yes, ma'am. I
14 attended the Reed Course of Basic Interviewing
15 and Interrogation. Approximately a year after
16 that, I attended the Advanced Reed Interviewing
17 and Interrogation course and then from that time
18 forward almost 20 years of experience basically
19 plying the trade.

20 MS. DANIELS: And bringing you back to the
21 time of your employment as an ABRA investigator,
22 have you become acquainted with the establishment

1 trading as The Alibi?

2 INVESTIGATOR BRASHEARS: Yes, ma'am I have.

3 MS. DANIELS: And about when was the first
4 time when you became acquainted with this
5 establishment?

6 INVESTIGATOR BRASHEARS: I believe it was
7 during the protest hearing for The Alibi.

8 MS. DANIELS: Are you aware of any conditions
9 placed on this establishment's license?

10 INVESTIGATOR BRASHEARS: Yes, ma'am, there
11 was a board order posted on the establishment.

12 MS. DANIELS: I will be showing you what has
13 been marked as District's Exhibit #1 for
14 identification. I'm giving one copy to counsel.

15 CHAIRPERSON ANDERSON: What is the document?

16 MS. DANIELS: Mr. Chairman it is the board's
17 order issued on May 18, 2016.

18 CHAIRPERSON ANDERSON: I don't have a copy of
19 the document.

20 MS. DANIELS: I have copies for the board.
21 Investigator Brashears, can you look at that and
22 tell me if you recognize it?

1 INVESTIGATOR BRASHEARS: I do, ma'am.

2 MS. DANIELS: And what do you recognize this
3 as?

4 INVESTIGATOR BRASHEARS: This was the board
5 order for HR Services, LLC, trading as The Alibi.

6 MS. DANIELS: And have you seen this document
7 before this hearing today?

8 INVESTIGATOR BRASHEARS: Yes, ma'am, I have.

9 MS. DANIELS: In what context did you view
10 this order?

11 INVESTIGATOR BRASHEARS: As part of the
12 investigations into the complaints.

13 MS. DANIELS: Can you please turn to page 36
14 and 37 of this order and tell me if you recognize
15 it?

16 INVESTIGATOR BRASHEARS: Yes, ma'am, I do.

17 MS. DANIELS: What do you recognize page 36
18 and page 37 of this exhibit to be?

19 INVESTIGATOR BRASHEARS: These are the
20 conditions of the board order imposed on The
21 Alibi.

22 MS. DANIELS: And, Investigator Brashears, is

1 this a true and accurate copy of the order as you
2 viewed it after your investigation?

3 INVESTIGATOR BRASHEARS: Yes, ma'am, it
4 appears to be.

5 MS. DANIELS: At this time, Mr. Chairman, the
6 District asks that the identification marks be
7 stricken and this be entered into evidence.

8 MR. KLAPROTH: No objection.

9 CHAIRPERSON ANDERSON: All right, so Exhibit
10 #1 is moved into evidence.

11 MS. DANIELS: Investigator Brashears, let me
12 direct your attention to June 10, 2016. Were you
13 on duty that day?

14 INVESTIGATOR BRASHEARS: Yes, ma'am, I was.

15 MS. DANIELS: Approximately what time were
16 you on duty?

17 INVESTIGATOR BRASHEARS: On June 10 I believe
18 I was on night shift.

19 MS. DANIELS: And on that night did you
20 become acquainted with the establishment trading
21 as The Alibi?

22 INVESTIGATOR BRASHEARS: Yes, ma'am.

1 MS. DANIELS: For what purpose did you visit
2 the establishment?

3 INVESTIGATOR BRASHEARS: I was assigned a
4 complaint that Mr. Scahill had been spotted at
5 the establishment.

6 MS. DANIELS: Had you ever met or seen Mr.
7 Scahill prior to this?

8 INVESTIGATOR BRASHEARS: I have.

9 MS. DANIELS: How many times have you seen
10 Mr. Scahill?

11 INVESTIGATOR BRASHEARS: I met him one time
12 previously in person during the protest
13 investigation.

14 MS. DANIELS: After you received this
15 complaint, what did you do?

16 INVESTIGATOR BRASHEARS: I proceeded to the
17 establishment accompanied by Investigator
18 Cullings and we -- I posted up approximately 50
19 feet away to surveil the sidewalk café.
20 Investigator Cullings was not familiar with The
21 Alibi or Mr. Scahill, so I provided her with a
22 passport photo and a driver's license photo of

1 Mr. Scahill and she went into the establishment
2 in an undercover capacity.

3 MS. DANIELS: Investigator Brashears, after
4 you visited this establishment, did you report
5 your observations?

6 INVESTIGATOR BRASHEARS: Yes ma'am, in a
7 report of investigation.

8 MS. DANIELS: How long after the investigator
9 did you record your observations in the report?

10 INVESTIGATOR BRASHEARS: It was completed
11 shortly thereafter.

12 MS. DANIELS: I'm showing you what has been
13 marked as Plaintiff's Exhibit #2 for
14 identification. I gave a copy to counsel. May I
15 approach the witness?

16 CHAIRPERSON ANDERSON: Sure.

17 MS. DANIELS: And I have --

18 CHAIRPERSON ANDERSON: The board does not
19 have it. Just clarification, since we're doing
20 both cases interchangeable, so I would like you
21 then to just for the record state for the exhibit
22 -- are the exhibits for both cases or are the

1 exhibits different?

2 MS. DANIELS: Mr. Chairman, the Exhibit #1,
3 which is the board's order, will be the same for
4 both cases; however, this exhibit #2 will be for
5 #16-CMP-00503.

6 CHAIRPERSON ANDERSON: Okay. Thank you.

7 MS. DANIELS: Investigator Brashears, can you
8 look at Exhibit #2 for identification and tell me
9 if you recognize that?

10 INVESTIGATOR BRASHEARS: I do, ma'am.

11 MS. DANIELS: What do you recognize it as?

12 INVESTIGATOR BRASHEARS: This is a report of
13 an investigation written for the incident on June
14 10, 2016, at The Alibi, authored by myself.

15 MS. DANIELS: Investigator Brashears, does
16 this report have exhibits?

17 INVESTIGATOR BRASHEARS: Yes, ma'am, it does.

18 MS. DANIELS: What is exhibit #1 of this
19 report?

20 INVESTIGATOR BRASHEARS: ABC board order
21 2016-280.

22 MS. DANIELS: To your knowledge is Exhibit #1

1 to Plaintiff's Exhibit #2 in the report the same
2 order that has been previously admitted into
3 evidence as Plaintiff's Exhibit #1?

4 INVESTIGATOR BRASHEARS: Yes, ma'am.

5 MS. DANIELS: At this time, Mr. Chairman, the
6 District requests that -- I apologize, Mr.
7 Chairman. Outside of this, is this a true and
8 accurate depiction of your observations that you
9 made on June 10, 2016?

10 INVESTIGATOR BRASHEARS: Yes, ma'am.

11 MS. DANIELS: At this time, Mr. Chairman, the
12 District requests that the identification mark be
13 stricken and this be admitted into the evidence.

14 CHAIRPERSON ANDERSON: Mr. Klaproth? Did you
15 say none?

16 MR. KLAPROTH: No objection.

17 CHAIRPERSON ANDERSON: Okay. Then Exhibit #2
18 will be just for clarification of the record,
19 what case number is Exhibit #2 a part of the
20 record for, please?

21 MS. DANIELS: For Case #16-CMP-00503.

22 CHAIRPERSON ANDERSON: Okay, thank you.

1 MS. DANIELS: Investigator Brashears, how did
2 you and Investigator Cullings arrive at the
3 establishment?

4 INVESTIGATOR BRASHEARS: We drove over.

5 MS. DANIELS: Did you drive separately or
6 jointly?

7 INVESTIGATOR BRASHEARS: I don't recall.

8 MS. DANIELS: When you first arrived to the
9 establishment, did it appear that the
10 establishment was open for business?

11 INVESTIGATOR BRASHEARS: Yes, ma'am.

12 MS. DANIELS: And you previously testified
13 that you observed the sidewalk café. How many
14 people did you see inside the sidewalk café?

15 INVESTIGATOR BRASHEARS: I remember seeing
16 Mr. Scahill, Ms. Traverso, and I believe one to
17 two other patrons.

18 MS. DANIELS: And how far away were you
19 standing from Mr. Scahill and Ms. Traverso at
20 that time?

21 INVESTIGATOR BRASHEARS: Approximately 50
22 feet.

1 MS. DANIELS: And did you have a clear view
2 of Mr. Scahill and Ms. Traverso?

3 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

4 MS. DANIELS: Were there any obstructions in
5 your view?

6 INVESTIGATOR BRASHEARS: No, ma'am.

7 MS. DANIELS: How did you know that this was
8 in fact Mr. Scahill?

9 INVESTIGATOR BRASHEARS: I had previously met
10 him in person and I also had reviewed a copy of
11 his passport photo and his driver's license
12 photo.

13 MS. DANIELS: And what was Mr. Scahill doing
14 when you first saw him?

15 INVESTIGATOR BRASHEARS: It appeared as
16 though he and Ms. Traverso were either eating
17 dinner or had just finished having something to
18 eat.

19 MS. DANIELS: Have you ever met or seen Ms.
20 Traverso before this date?

21 INVESTIGATOR BRASHEARS: Yes, ma'am.

22 MS. DANIELS: And how many times have you

1 seen her?

2 INVESTIGATOR BRASHEARS: I met her during the
3 protest hearing in person and then I believe that
4 was it prior to the subsequent meetings
5 concerning the monitoring and the investigations.

6 MS. DANIELS: Investigator Brashears, do you
7 see Ms. Traverso in the hearing room today?

8 INVESTIGATOR BRASHEARS: I do.

9 MS. DANIELS: And can you please identify Ms.
10 Traverso by her location in the room and an
11 article of clothing that she is wearing?

12 INVESTIGATOR BRASHEARS: She's sitting on the
13 other side of the attorney, there, writing
14 currently, in a black or dark-colored smock.

15 MS. DANIELS: May the record reflect that
16 investigator Brashears has identified Ms.
17 Traverso in the hearing room.

18 MR. KLAPROTH: No objection.

19 MS. DANIELS: Investigator Brashears, what
20 was Ms. Traverso doing while sitting with Mr.
21 Scahill?

22 INVESTIGATOR BRASHEARS: It appeared as

1 though they were conversing.

2 MS. DANIELS: Did you hear their
3 conversation?

4 INVESTIGATOR BRASHEARS: No, ma'am, I did
5 not.

6 MS. DANIELS: Can you please describe their
7 body language?

8 INVESTIGATOR BRASHEARS: Very casual.

9 MS. DANIELS: How long did you observe Mr.
10 Scahill and Ms. Traverso sitting at the sidewalk
11 café?

12 INVESTIGATOR BRASHEARS: I believe it was
13 five to ten minutes. It was a short time.

14 MS. DANIELS: And at this time what was
15 investigator Cullings doing?

16 INVESTIGATOR BRASHEARS: She went inside --
17 when we first arrived she went into the
18 establishment to look to see if Mr. Scahill was
19 on the premises.

20 MS. DANIELS: At any time did you attempt to
21 get Investigator Culling's attention from inside
22 the establishment?

1 INVESTIGATOR BRASHEARS: Yes, once I realized
2 Mr. Scahill was sitting on the sidewalk café I
3 called her on her cell phone.

4 MS. DANIELS: What did you do after you
5 called Investigator Cullings on her cell phone?

6 INVESTIGATOR BRASHEARS: I let her know that
7 I had spotted Mr. Scahill on the sidewalk café.

8 MS. DANIELS: Did either Mr. Scahill or Ms.
9 Traverso do anything at that time?

10 INVESTIGATOR BRASHEARS: No, ma'am, I believe
11 they were still seated.

12 MS. DANIELS: Did Investigator Cullings come
13 out of the establishment at any time?

14 INVESTIGATOR BRASHEARS: Yes, she did.

15 MS. DANIELS: And what did you do after that?

16 INVESTIGATOR BRASHEARS: I entered the
17 establishment at that point in an undercover
18 fashion.

19 MS. DANIELS: When you entered the
20 establishment did you speak to anyone?

21 INVESTIGATOR BRASHEARS: Yes, I spoke with
22 Ms. Traverso.

1 MS. DANIELS: And where did you speak to Ms.
2 Traverso?

3 INVESTIGATOR BRASHEARS: Inside the main door
4 of the establishment there's an area to the right
5 where, I guess, dishes are washed, glasses and
6 things refilled, what-not, and we were in the
7 entryway to that.

8 MS. DANIELS: When you first started speaking
9 to Ms. Traverso did you identify yourself as an
10 ABRA investigator?

11 INVESTIGATOR BRASHEARS: I did.

12 MS. DANIELS: And what did you say to her and
13 what did she say to you?

14 INVESTIGATOR BRASHEARS: I basically advised
15 her that -- well, I actually requested to meet
16 with her on Monday to set up the final inspection
17 for the establishment. We were discussing that.

18 MS. DANIELS: While you were speaking to Ms.
19 Traverso did anything happen inside the
20 establishment?

21 INVESTIGATOR BRASHEARS: Yes, ma'am, Mr.
22 Scahill walked past, or actually between both of

1 us, carrying a tray with some dishes on it.

2 MS. DANIELS: And did you and Mr. Scahill
3 speak?

4 INVESTIGATOR BRASHEARS: No, ma'am.

5 MS. DANIELS: And when you saw Mr. Scahill
6 walk between you and Ms. Traverso, did you say
7 anything to Ms. Traverso?

8 INVESTIGATOR BRASHEARS: Yes, ma'am, I said,
9 'hey, wasn't that Martin?'

10 MS. DANIELS: And what did Ms. Traverso do in
11 response?

12 INVESTIGATOR BRASHEARS: She immediately
13 followed him over to the, I guess the dishwashing
14 area and basically started to berate him and tell
15 him 'you're not supposed to be here. If you
16 don't leave, I'm going to call the police.'

17 MS. DANIELS: What did Mr. Scahill do after
18 that conversation?

19 INVESTIGATOR BRASHEARS: He did not reply but
20 immediately departed the establishment.

21 MS. DANIELS: After Mr. Scahill departed the
22 establishment did you continue to speak to Ms.

1 Traverso?

2 INVESTIGATOR BRASHEARS: I did.

3 MS. DANIELS: And what did you say to her and
4 what did she say to you?

5 INVESTIGATOR BRASHEARS: Ms. Traverso stated
6 that Mr. Scahill had been showing up at the
7 establishment in an attempt to get her in trouble
8 as he was not happy with the outcome of the ABC
9 board hearing. Ms. Traverso also stated that Mr.
10 Scahill was in league with one of her bartenders
11 and she stated that she was going to have to fire
12 him, referencing the bartender. She also stated
13 that the bartender was trying to F her and that
14 he had to go, and when I asked her what she meant
15 by that, she meant figuratively and that the
16 bartender was causing her trouble. At that point
17 I advised her that the situation with Mr. Scahill
18 was an ABC board order violation and that I was
19 going to notify the ABC board and then I departed
20 the establishment.

21 MR. KLAPROTH: I'm just going to object to
22 the witness reading directly from his report

1 rather than testifying as to his memory.

2 INVESTIGATOR BRASHEARS: It was nine months
3 ago.

4 CHAIRPERSON ANDERSON: Well, I'm going to
5 sustain the objection. So, if the witness needs
6 some refresher then I mean it should be clear
7 what's being done. So, I'll sustain the
8 objection.

9 MS. DANIELS: Yes, Mr. Chairman, the report
10 has been admitted as Plaintiff's Exhibit#2 and is
11 in the possession of the investigator to view but
12 I do understand the board.

13 CHAIRPERSON ANDERSON: I will ask the witness
14 to -- I mean the document is in evidence so you
15 can review it and use it to refresh your
16 recollection but you should not be reading it
17 word for word to say what's in it.

18 INVESTIGATOR BRASHEARS: Understood, sir.

19 CHAIRPERSON ANDERSON: The objection is
20 moving forward. What's there is already said,
21 but moving forward I'm asking that the witness,
22 if you need to refresh your recollection by

1 reviewing the report but when the questions are
2 asked you shouldn't be reading from -- just state
3 the fact, not word for word what's in the report.

4 MS. DANIELS: Investigator Brashears, while
5 you were at the establishment did you observe Ms.
6 Traverso call the Metropolitan Police Department?

7 INVESTIGATOR BRASHEARS: I did not.

8 MS. DANIELS: And at some point, did you
9 leave the establishment?

10 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

11 MS. DANIELS: Did anything happen relevant to
12 this matter in days after the incident?

13 INVESTIGATOR BRASHEARS: I'm sorry, I don't
14 understand.

15 MS. DANIELS: Did you return to your office
16 after?

17 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

18 MS. DANIELS: And to conclude your
19 investigation did you review any documents?

20 INVESTIGATOR BRASHEARS: I reviewed the board
21 order, yes, ma'am.

22 MS. DANIELS: Mr. Chairman at this time I

1 have no further questions for Investigator
2 Brashears.

3 CHAIRPERSON ANDERSON: You have no further
4 questions?

5 MS. DANIELS: I have no further questions,
6 Mr. Chairman.

7 MR. ADAMS: Just to be clear, are we doing
8 cross examinations separately or are we just have
9 them testify once?

10 MR. KLAPROTH: I'll just cross him and get it
11 all out.

12 CHAIRPERSON ANDERSON: I think that he
13 testified on both cases, so I think --

14 MR. KLAPROTH: No.

15 MR. ADAMS: No, it was only for one case.
16 He's only testified to one report.

17 CHAIRPERSON ANDERSON: So, tell me how -- are
18 you going to call him in a second case?

19 MS. DANIELS: Mr. Chairman, he just testified
20 to the substantive events of #16-CMP-503.

21 CHAIRPERSON ANDERSON: Right.

22 MS. DANIELS: I was either going to continue

1 now with the direct examination for #16-CMP-600
2 and then allow for cross by counsel or we can
3 allow cross on this matter and then I can do the
4 direct for the substantive events of #16-CMP-600.

5 CHAIRPERSON ANDERSON: I think it's cleaner
6 if you just go ahead and do a direct for the
7 entire case --

8 MS. DANIELS: Sure.

9 CHAIRPERSON ANDERSON: -- because we'll be
10 going back and forth and then I'm going to lose
11 track what case we're talking about, so we'll
12 just -- move on, have him testify on both cases -
13 -

14 MS. DANIELS: Okay.

15 CHAIRPERSON ANDERSON: -- and then we'll have
16 cross.

17 MS. DANIELS: Sure. Investigator Brashears,
18 let me direct your attention to July 8, 2016.
19 Were you on duty that day?

20 INVESTIGATOR BRASHEARS: Yes, ma'am.

21 MS. DANIELS: And when you were on duty that
22 day, did you become acquainted with the

1 establishment trading as The Alibi?

2 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

3 MS. DANIELS: And for what purpose did you
4 become acquainted with that establishment?

5 INVESTIGATOR BRASHEARS: I was monitoring the
6 establishment due to a complaint that Mr. Scahill
7 had been spotted at the establishment.

8 MS. DANIELS: And after you monitored that
9 establishment did you record your observations?

10 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

11 MS. DANIELS: And how did you record your
12 observations of your investigation?

13 INVESTIGATOR BRASHEARS: In an investigative
14 report.

15 MS. DANIELS: And how long after your
16 investigation did you record your findings in
17 your investigator reports?

18 INVESTIGATOR BRASHEARS: Shortly thereafter.

19 MS. DANIELS: At this time I will be showing
20 you what is being marked as Plaintiff's Exhibit
21 #3 for identification.

22 CHAIRPERSON ANDERSON: And #3 is being

1 identified in case #16-CMP-00600?

2 MS. DANIELS: That is correct.

3 CHAIRPERSON ANDERSON: All right.

4 MS. DANIELS: I'm giving a copy to counsel.

5 MR. KLAPROTH: Thank you.

6 MS. DANIELS: And copies for the board. May
7 I approach the witness?

8 CHAIRPERSON ANDERSON: Sure, go ahead,
9 please.

10 MS. DANIELS: Investigator Brashears I'm
11 giving you what has been marked as Plaintiff's
12 Exhibit #3 for identification. Will you look at
13 that and tell me if you recognize it?

14 INVESTIGATOR BRASHEARS: Yes, ma'am, I do.

15 MS. DANIELS: And what do you recognize it
16 as?

17 INVESTIGATOR BRASHEARS: It is an ABRA case
18 report documenting the events of The Alibi that
19 occurred on July 8, 2016, and it was authorized
20 by myself.

21 MS. DANIELS: And Investigator Brashears does
22 the report contain exhibits?

1 INVESTIGATOR BRASHEARS: Yes, ma'am, it does.

2 MS. DANIELS: And what is Exhibit #1?

3 INVESTIGATOR BRASHEARS: It is ABC board
4 order 2016-280.

5 MS. DANIELS: And is Exhibit #1 to your
6 report marked as Plaintiff's Exhibit #3 for
7 identification the same order that was previously
8 admitted into evidence as Plaintiff's Exhibit #1?

9 INVESTIGATOR BRASHEARS: Yes, ma'am.

10 MS. DANIELS: And does this report fairly and
11 accurately depict your observations made in your
12 investigation in this case number?

13 INVESTIGATOR BRASHEARS: Yes, ma'am.

14 MS. DANIELS: At this time, Mr. Chairman, the
15 District requests that the identification marks
16 be stricken and this exhibit be entered into
17 evidence for case #16-CMP-00600.

18 CHAIRPERSON ANDERSON: Mr. Klaproth?

19 MR. KLAPROTH: So, just to be clear for the
20 record, Exhibit #1, case report, is not actually
21 attached to Exhibit #3. Is that correct?

22 MS. DANIELS: That is correct, Investigator

1 Brashears testified that Exhibit #1 to this
2 report is Plaintiff's Exhibit #1 that was
3 previously admitted into evidence as the board's
4 order May 18, 2016, order.

5 MR. KLAPROTH: No objection, provided the
6 witness doesn't read from the report.

7 CHAIRPERSON ANDERSON: All right. Just for
8 the record, what does this exhibit consist of?
9 It's just the case report? I see a picture on
10 there so I'm trying to figure out -- we have not
11 had testimony on the picture, so I'm just trying
12 to get some clarification.

13 MR. KLAPROTH: And I would object to the
14 admissibility of the picture.

15 MS. DANIELS: Mr. Chairman, I will ask a
16 couple questions about the picture as it does go
17 with the Investigative report as to Exhibit #1 of
18 this investigative report, it is the board's
19 order issued on May 18, 2016, that was previously
20 admitted into evidence as Plaintiff's Exhibit #1.

21 CHAIRPERSON ANDERSON: I'm fine with that,
22 but I'm just saying the document that I have in

1 front of me, that says exhibit #3, it has a case
2 report, it's entitled "Case Report," it has four
3 pages, and then the last page has a picture, and
4 I've had no testimony what the picture is and I'm
5 getting an objection to the picture and so since
6 we've had no testimony, unless there's testimony
7 I am going to sustain the objection unless
8 there's some testimony to authenticate what this
9 picture. I don't know what it is. It's part of
10 an exhibit but we have no testimony.

11 MS. DANIELS: Mr. Chairman I will ask a few
12 questions of Investigator Brashears about that
13 photo before we admit it into evidence.

14 CHAIRPERSON ANDERSON: Okay, that's fine. Go
15 on.

16 MS. DANIELS: So, I retract my earlier
17 question. Investigator Brashears, can you flip
18 to exhibit #2 of your investigative report which
19 has been marked as Plaintiff's Exhibit #3 for
20 identification?

21 INVESTIGATOR BRASHEARS: Yes, ma'am.

22 MS. DANIELS: And can you look at that and

1 tell me if you recognize it?

2 INVESTIGATOR BRASHEARS: Yes, ma'am.

3 MS. DANIELS: And what do you recognize this
4 as?

5 INVESTIGATOR BRASHEARS: It appears to be a
6 photograph of Mr. Scahill outside The Alibi.

7 MS. DANIELS: And who took this photograph?

8 INVESTIGATOR BRASHEARS: A complainant took
9 the photograph and forwarded it to ABRA as part
10 of a complaint that Mr. Scahill was sighted at
11 the establishment.

12 MS. DANIELS: And was this photograph a part
13 of your investigator?

14 INVESTIGATOR BRASHEARS: I included it as
15 such, yes, ma'am.

16 MS. DANIELS: And, Investigator Brashears, is
17 this photograph part of your investigative
18 report?

19 INVESTIGATOR BRASHEARS: Yes, ma'am.

20 MS. DANIELS: And how did the complainant
21 send you this photograph?

22 INVESTIGATOR BRASHEARS: I believe the

1 photograph was forwarded to an ABRA supervisor
2 via e-mail.

3 MS. DANIELS: And Investigator Brashears, do
4 you recognize anyone in this photograph?

5 INVESTIGATOR BRASHEARS: Yes, ma'am, it
6 appears to be Mr. Scahill.

7 MS. DANIELS: And how do you recognize it to
8 be Martin Scahill?

9 INVESTIGATOR BRASHEARS: Due to the fact that
10 I've met Mr. Scahill in person and I had reviewed
11 his photo on his driver's license and his
12 passport documents.

13 MS. DANIELS: And lastly, investigator
14 Brashears, where does photograph look to be
15 taken?

16 INVESTIGATOR BRASHEARS: In the sidewalk café
17 of The Alibi.

18 MS. DANIELS: And how do you know that to be
19 The Alibi?

20 INVESTIGATOR BRASHEARS: Because I've visited
21 the establishment on numerous occasions.

22 MS. DANIELS: At this time, Mr. Chairman, the

1 District requests that the identification marks
2 be stricken and the Plaintiff's Exhibit #3 be
3 entered into evidence.

4 CHAIRPERSON ANDERSON: Mr. Klaproth?

5 MR. KLAPROTH: Objection. There's no
6 testimony as to when the photograph was taken;
7 therefore, it lacks relevance.

8 CHAIRPERSON ANDERSON: I'm sorry?

9 MR. KLAPROTH: There's no testimony as to
10 when the photograph was taken; therefore, it
11 lacks relevance because the allegations in this
12 case is that Mr. Scahill was there after the
13 issuance of the board order. This photograph
14 could have been taken five years ago.

15 CHAIRPERSON ANDERSON: Ms. Daniels?

16 MS. DANIELS: Mr. Chairman, may I ask
17 Investigator Brashears one more question to
18 respond to counsel's objection?

19 CHAIRPERSON ANDERSON: You're welcome to ask
20 a question.

21 MS. DANIELS: Investigator Brashears, do you
22 remember when you received the complaint and this

1 photograph pertaining to it?

2 INVESTIGATOR BRASHEARS: The complainant
3 stated the photograph was taken on July 4, 2016.

4 MS. DANIELS: Mr. Chairman I have no more
5 questions regarding that objection.

6 MR. KLAPROTH: Same objection. And I'll add
7 an objection of hearsay.

8 MS. DANIELS: Mr. Chairman, the District's
9 response to that is that 1) This photograph is
10 part of Investigator Brashears' investigative
11 report for this case matter and 2) for the
12 objection for hearsay, this is an administrative
13 proceeding; hearsay is allowed to the extent that
14 the board finds it reliable and it does go to the
15 effect on the listener and it is arguable it is
16 not hearsay because this cause Investigator
17 Brashears to continue his investigation of the
18 establishment.

19 MR. ALBERTI: Can I ask a question, Mr.
20 Chairman?

21 CHAIRPERSON ANDERSON: Yes, Mr. Alberti?

22 MR. ALBERTI: Investigator Brashears, I know

1 this is a little unusual but, Investigator
2 Brashears, you saw this picture before you went
3 out?

4 INVESTIGATOR BRASHEARS: Yes, sir.

5 MR. ALBERTI: Okay, so is this what prompted
6 you to go out and investigate Mr. Scahill's
7 possible presence?

8 INVESTIGATOR BRASHEARS: Yes, sir.

9 MR. ALBERTI: Okay. I'll just state that at
10 least for the purposes of demonstrating why Mr.
11 Brashears went out, this has relevance. I'm just
12 laying that out.

13 MR. KLAPROTH: Understood. I still object to
14 the authenticity.

15 CHAIRPERSON ANDERSON: I do have some
16 concerns because we have not had any testimony
17 exactly when this picture was. From what I've
18 been told the picture was sent in to say that he
19 was there, there was a subsequent investigation,
20 but this picture -- I've had no testimony to
21 prove exactly when this picture was taken, so I'm
22 going to sustain the objection and we have had

1 testimony, I don't think -- so I think because we
2 have not had any direct testimony to say when
3 this picture was taken -- but I, yeah. So, I'm
4 going to sustain the objection and not admit this
5 portion of the document.

6 MR. ALBERTI: But can we make admissible the
7 rest of the report?

8 CHAIRPERSON ANDERSON: It's just the picture.

9 MS. DANIELS: Okay.

10 CHAIRPERSON ANDERSON: Because we have not
11 had sufficient testimony to establish exactly
12 when this picture was taken. If the picture was
13 taken by the investigator then he could, but from
14 what I'm told someone sent this in to the
15 establishment, we don't know when it was taken,
16 and as counsel stated there isn't, so I'll
17 sustain the portion of the objection and not
18 admit the picture, but the rest of the report is
19 admitted as part of the evidence, okay?

20 MS. DANIELS: I understand, Mr. Chairman.

21 CHAIRPERSON ANDERSON: All right.

22 MS. DANIELS: Investigator Brashears, let me

1 direct your attention to July 5, 2016. Were you
2 on duty that day?

3 INVESTIGATOR BRASHEARS: Yes, ma'am, I was.

4 MS. DANIELS: And did anything happen on this
5 day in relation to the establishment?

6 INVESTIGATOR BRASHEARS: Yes, ma'am, ABRA
7 received a complaint that Mr. Scahill was present
8 at The Alibi on the 4th of July.

9 MS. DANIELS: And what did you do after you
10 received this complaint?

11 INVESTIGATOR BRASHEARS: I monitored the
12 establishment.

13 MS. DANIELS: And on what day did you monitor
14 the establishment?

15 INVESTIGATOR BRASHEARS: My initial
16 monitoring was on Wednesday, July 6th, at which
17 time I did not find Mr. Scahill on the premises.

18 MS. DANIELS: Did you monitor the
19 establishment alone or with a partner?

20 INVESTIGATOR BRASHEARS: I believe I was
21 alone at that time, ma'am.

22 MS. DANIELS: What did you do after you

1 observed the establishment on that day?

2 INVESTIGATOR BRASHEARS: I returned
3 subsequently on July 8th and monitored the
4 establishment again.

5 MS. DANIELS: And at approximately what time
6 did you arrive at the establishment?

7 INVESTIGATOR BRASHEARS: Approximately 11:40
8 p.m.

9 MS. DANIELS: Were you alone or with a
10 partner on that day?

11 INVESTIGATOR BRASHEARS: I was alone, ma'am.

12 MS. DANIELS: And when you first arrived to
13 the establishment did you observe anything?

14 INVESTIGATOR BRASHEARS: Yes, ma'am.

15 MS. DANIELS: And what did you observe?

16 INVESTIGATOR BRASHEARS: I parked around the
17 corner from The Alibi. As I walked up I looked
18 through the window -- front window of The Alibi.

19 MS. DANIELS: And can you please describe the
20 lighting surrounding the establishment?

21 INVESTIGATOR BRASHEARS: There were street
22 lights on and there was lighting coming from

1 inside the establishment through the window.

2 MS. DANIELS: And what did you see in the
3 establishment while looking through the window?

4 INVESTIGATOR BRASHEARS: I noted Mr. Scahill
5 standing near the bar speaking with Ms. Traverso.

6 MS. DANIELS: And can you please describe
7 whether Mr. Scahill was facing you or facing away
8 from you?

9 INVESTIGATOR BRASHEARS: He was facing toward
10 me.

11 MS. DANIELS: And how did you identify this
12 individual to be Mr. Scahill?

13 INVESTIGATOR BRASHEARS: Because I had
14 previously met Mr. Scahill and once again I had
15 reviewed his driver's license photo and passport
16 photo documentation.

17 MS. DANIELS: Did you have a clear line of
18 sight of Mr. Scahill?

19 INVESTIGATOR BRASHEARS: Yes, ma'am I did.

20 MS. DANIELS: Did you have any obstructions
21 in your view?

22 INVESTIGATOR BRASHEARS: No, ma'am.

1 MS. DANIELS: And what did you do after you
2 viewed Mr. Scahill and Ms. Traverso through the
3 window?

4 INVESTIGATOR BRASHEARS: I went up to the
5 front door to the establishment and tried to gain
6 entry.

7 MS. DANIELS: Was the door open or closed?

8 INVESTIGATOR BRASHEARS: The door was closed,
9 ma'am.

10 MS. DANIELS: What did you do after you
11 discovered that the door was closed?

12 INVESTIGATOR BRASHEARS: Attempted to pull on
13 it and when it did not come open I gave a brief
14 knock.

15 MS. DANIELS: And what happened after you
16 knocked on the door?

17 INVESTIGATOR BRASHEARS: A female, what I
18 presumed to be an employee, opened the door and
19 asked if she could help me.

20 MS. DANIELS: Did she identify herself as an
21 employee?

22 INVESTIGATOR BRASHEARS: She did not, well,

1 as to say, she stated, "we're closed."

2 MS. DANIELS: Have you seen this female
3 employee before?

4 INVESTIGATOR BRASHEARS: I have not.

5 MS. DANIELS: When you spoke to the female
6 employee at the door were you able to see inside
7 the establishment?

8 INVESTIGATOR BRASHEARS: Just briefly into
9 the entryway.

10 MS. DANIELS: Did you say anything to the
11 female employee after she said they were closed?

12 INVESTIGATOR BRASHEARS: Yes, ma'am, I was in
13 an undercover capacity and it dawned on me that
14 she did not realize who I was so I asked her if
15 Martin was around.

16 MS. DANIELS: And what did she do, if
17 anything, after you asked that question?

18 INVESTIGATOR BRASHEARS: She stated, 'he's
19 talking to Rachel next to the bar.'

20 MS. DANIELS: And after she gave that
21 response, what did you do?

22 INVESTIGATOR BRASHEARS: I identified myself

1 as an ABRA investigator and attempted to enter
2 the establishment.

3 MS. DANIELS: What happened after you
4 identified yourself as an ABRA investigator?

5 INVESTIGATOR BRASHEARS: She stated, 'hold on
6 a minute,' at which time I walked around her and
7 entered the establishment.

8 MS. DANIELS: When you entered the
9 establishment did you observe Mr. Scahill at the
10 bar as previously seen?

11 INVESTIGATOR BRASHEARS: No, ma'am. When I
12 got to the bar, he was not there.

13 MS. DANIELS: Was Ms. Traverso there?

14 INVESTIGATOR BRASHEARS: She was.

15 MS. DANIELS: And did you have a conversation
16 with Ms. Traverso?

17 INVESTIGATOR BRASHEARS: I did.

18 MS. DANIELS: And where did you have this
19 conversation?

20 INVESTIGATOR BRASHEARS: Right near the bar.

21 MS. DANIELS: And what did you say to Ms.
22 Traverso and what did she say to you?

1 INVESTIGATOR BRASHEARS: I basically informed
2 her that I spotted Mr. Scahill in the
3 establishment and she basically denied that he
4 was there.

5 MS. DANIELS: Can you please describe Ms.
6 Traverso's body language when she spoke to you if
7 you can?

8 INVESTIGATOR BRASHEARS: No, ma'am. I
9 can't.

10 MS. DANIELS: Okay, sure. Did you speak to
11 anyone else in the establishment after you spoke
12 to Ms. Traverso?

13 INVESTIGATOR BRASHEARS: Not that I recall.

14 MS. DANIELS: And at that point did you
15 depart the establishment?

16 INVESTIGATOR BRASHEARS: Yes, ma'am, I did.

17 MS. DANIELS: And what did you do next?

18 INVESTIGATOR BRASHEARS: Came back to the
19 office and documented my findings.

20 MS. DANIELS: Before you arrived back at your
21 office did you stay in the surrounding area?

22 INVESTIGATOR BRASHEARS: Oh, yes, ma'am.

1 MS. DANIELS: And for how long did you stay
2 in the surrounding area?

3 INVESTIGATOR BRASHEARS: For approximately 20
4 minutes.

5 MS. DANIELS: And for what purpose did you do
6 that?

7 INVESTIGATOR BRASHEARS: Basically to see if
8 Mr. Scahill would exit the establishment.

9 MS. DANIELS: While you were monitoring the
10 establishment from the outside, did you see
11 anyone leave or enter the establishment?

12 INVESTIGATOR BRASHEARS: No, ma'am, I did
13 not.

14 MS. DANIELS: At this time, Mr. Chairman, I
15 have no further questions. I have no further
16 questions for Investigator Brashears.

17 CHAIRPERSON ANDERSON: All right, Mr.
18 Klaproth, you can do cross examination on both
19 cases.

20 MR. KLAPROTH: Thank you, Mr. Chairman. Mr.
21 Brashears, I'd like to direct your attention to
22 the incident you testified about on June 10,

1 2016. Understood?

2 INVESTIGATOR BRASHEARS: Yes, sir.

3 MR. KLAPROTH: And you testified earlier that
4 the underlying events occurred approximately nine
5 months ago and you didn't have a good memory, is
6 that correct?

7 INVESTIGATOR BRASHEARS: That's correct.

8 MR. KLAPROTH: We'll do our best to try to
9 walk through this and see what you do remember.
10 So, you testified that you had the evening shift
11 that night, right?

12 INVESTIGATOR BRASHEARS: Yes, sir.

13 MR. KLAPROTH: Do you recall the time you
14 came on that shift?

15 INVESTIGATOR BRASHEARS: Well, the routine
16 shift on a Friday night would be 7:30 p.m. to
17 4:00 a.m.

18 MR. KLAPROTH: What time, if you recall, did
19 you receive an assignment to investigate The
20 Alibi?

21 INVESTIGATOR BRASHEARS: Some time prior to
22 going to the establishment. I don't recall the

1 exact time.

2 MR. KLAPROTH: Was it less than an hour?
3 More than an hour?

4 INVESTIGATOR BRASHEARS: Typically on the
5 night shift when investigators come in they get
6 their monitoring assignments anywhere from 7:30
7 to 9:00 p.m.

8 MR. KLAPROTH: What's a monitoring
9 assignment?

10 INVESTIGATOR BRASHEARS: Basically if there's
11 been a complaint at an establishment, an ABRA
12 investigator is assigned to go to the
13 establishment to check out the complaint.

14 MR. KLAPROTH: And who assigned you the -- I
15 believe you testified earlier that ABRA did
16 receive a complaint on June 10th, is that
17 correct?

18 INVESTIGATOR BRASHEARS: That was my
19 understanding, yes, sir.

20 MR. KLAPROTH: And who assigned you to
21 investigate that complaint?

22 INVESTIGATOR BRASHEARS: That would have been

1 my supervisory investigator.

2 MR. KLAPROTH: And who was that?

3 INVESTIGATOR BRASHEARS: Supervisor Craig
4 Stewart.

5 MR. KLAPROTH: And how did he assign you the
6 investigation?

7 INVESTIGATOR BRASHEARS: Other than putting
8 it on the monitoring sheet and maybe mentioning
9 it to me, I don't recall any other way.

10 MR. KLAPROTH: Monitoring sheet. Is that a
11 document?

12 INVESTIGATOR BRASHEARS: Yes, sir.

13 MR. KLAPROTH: How do you receive that
14 monitoring sheet?

15 INVESTIGATOR BRASHEARS: Typically through e-
16 mail.

17 MR. KLAPROTH: And is that done in the
18 standard course of business at ABRA?

19 INVESTIGATOR BRASHEARS: Yes, sir. That's
20 correct.

21 MR. KLAPROTH: I'm going to hand you what's
22 been marked as let's say Alibi Exhibit #3.

1 Investigator Brashears, take a look at that
2 document and see if you can identify it for us.

3 INVESTIGATOR BRASHEARS: It appears to be an
4 e-mail to me from Supervisor Craig Stewart.

5 MR. KLAPROTH: What makes you believe that?

6 INVESTIGATOR BRASHEARS: Well, it is
7 addressed from supervisor Craig Stewart to
8 myself.

9 MR. KLAPROTH: Okay, what's the time of that
10 e-mail?

11 INVESTIGATOR BRASHEARS: 9:09 p.m.

12 MR. KLAPROTH: Is there anything attached to
13 that e-mail?

14 INVESTIGATOR BRASHEARS: Investigator
15 Assignment 6/10/2016.

16 MR. KLAPROTH: And is that the monitoring
17 assignment that you received on June 10, 2016?

18 INVESTIGATOR BRASHEARS: Yes, sir, that's
19 correct.

20 MR. KLAPROTH: What does that monitoring
21 assignment assign you to do?

22 INVESTIGATOR BRASHEARS: It says

1 "Investigator Brashears, establishment The Alibi,
2 address 2nd Street Northeast, details: Monitor
3 for Martin Scahill."

4 MR. KLAPROTH: You testified earlier that I
5 believe it was Investigator Nicole Cullings also
6 went with you to The Alibi on June 10th?

7 INVESTIGATOR BRASHEARS: That's correct, sir.

8 MR. KLAPROTH: Was she assigned to
9 investigate The Alibi?

10 INVESTIGATOR BRASHEARS: No, she wasn't.

11 MR. KLAPROTH: So, why did she?

12 INVESTIGATOR BRASHEARS: I believe I took her
13 along as a second investigator, second set of
14 eyes.

15 MR. KLAPROTH: And whose decision was that?
16 Was that your decision? I probably ran it
17 through the supervisory investigator.

18 MR. KLAPROTH: And who's that?

19 INVESTIGATOR BRASHEARS: It would be
20 supervisor, Craig Stewart.

21 MR. KLAPROTH: And I believe you testified
22 that you had a discussion with Mr. Stewart about

1 the complaint. Is that correct? Or about the
2 assignment?

3 INVESTIGATOR BRASHEARS: Yes, sir.

4 MR. KLAPROTH: And what was that discussion?

5 INVESTIGATOR BRASHEARS: Basically that there
6 had been a board order violation in the fact that
7 Mr. Scahill was spotted on the premises and I was
8 to go and check it out.

9 MR. KLAPROTH: So you were told that there
10 was a board order violation?

11 INVESTIGATOR BRASHEARS: Yes, sir, I believe
12 that is correct.

13 MR. KLAPROTH: And what was the basis for
14 that? Did you ask as far as the board order
15 violation?

16 INVESTIGATOR BRASHEARS: I reviewed it.

17 MR. KLAPROTH: What did you read?

18 INVESTIGATOR BRASHEARS: Basically stating
19 that Mr. Scahill could not be on the
20 establishment, could not work at the
21 establishment in any capacity and that if he was
22 on premises, Ms. Traverso was to contact law

1 enforcement.

2 MR. KLAPROTH: So, that's the board order
3 you're referring to, correct?

4 INVESTIGATOR BRASHEARS: Yes, sir.

5 MR. KLAPROTH: So that's the board order
6 you're referring to, correct?

7 INVESTIGATOR BRASHEARS: Yes, sir.

8 MR. KLAPROTH: So, before you left to
9 investigate what information did you have other
10 than that a board order violation had occurred?

11 INVESTIGATOR BRASHEARS: Well, I had that and
12 due to the fact that I had completed the protest
13 investigation there I had photo -- a driver's
14 license photo and a passport photo of Mr.
15 Scahill.

16 MR. KLAPROTH: How did you get the driver's
17 license and passport photo?

18 INVESTIGATOR BRASHEARS: It was part of ABRA
19 records.

20 MR. KLAPROTH: And you're aware I subpoenaed
21 your investigative file and I didn't see either
22 of those documents in there? Were they part of

1 your investigative file?

2 INVESTIGATOR BRASHEARS: Probably not.

3 MR. KLAPROTH: Why is that?

4 INVESTIGATOR BRASHEARS: Extraneous
5 information other than the report does not go
6 into the case file.

7 MR. KLAPROTH: So that was the only thing you
8 had to base the identification of Mr. Scahill
9 though with you that day, correct?

10 INVESTIGATOR BRASHEARS: No, I had previously
11 met him.

12 MR. KLAPROTH: Okay, but how about Tasha
13 Cullings?

14 INVESTIGATOR BRASHEARS: Tasha Cullings was
15 utilizing the photograph on the driver's license
16 and the passport.

17 MR. KLAPROTH: Would you agree that was an
18 integral part of the investigation with
19 Investigator Cullings?

20 INVESTIGATOR BRASHEARS: Yes.

21 MR. KLAPROTH: But that wasn't included as
22 part of the investigative file or report,

1 correct?

2 INVESTIGATOR BRASHEARS: Correct.

3 MR. KLAPROTH: Did you have any other
4 discussions with anyone at ABRA prior to going to
5 investigate The Alibi on June 10th?

6 INVESTIGATOR BRASHEARS: I may have, but at
7 this date I don't recall.

8 MR. KLAPROTH: So, the only information you
9 had though was that a board order had been
10 violated because Mr. Scahill was present at The
11 Alibi?

12 INVESTIGATOR BRASHEARS: Yes, sir.

13 MR. KLAPROTH: What did you do after you
14 received the monitoring assignment?

15 INVESTIGATOR BRASHEARS: If I remember
16 correctly, we -- I spoke with Investigator
17 Cullings about going to monitor the establishment
18 and we went and monitored the establishment.

19 MR. KLAPROTH: You went directly there?

20 INVESTIGATOR BRASHEARS: Yes, sir. Well,
21 within a few minutes of leaving the
22 establishment, Yes, sir -- or leaving ABRA.

1 MR. KLAPROTH: And I assume then that
2 Investigator Cullings was approved to also
3 investigate The Alibi with you?

4 INVESTIGATOR BRASHEARS: Well, there -- I
5 mean, she's an ABRA investigator. If there's a
6 complaint there wouldn't need to be an approval
7 process, sir.

8 MR. KLAPROTH: Well, you testified earlier
9 that you spoke with Mr. Stewart to see if it was
10 all right if she tagged along.

11 INVESTIGATOR BRASHEARS: No, I basically
12 wanted to let my supervisor know what we were
13 doing.

14 MR. KLAPROTH: Why did you think it was
15 important to have Investigator Cullings with you?

16 INVESTIGATOR BRASHEARS: Well, once again, I
17 was familiar with Mr. Scahill but I wanted a
18 second person to independently verify that.

19 MR. KLAPROTH: So you thought it was
20 important that the second person independently
21 verify, correct?

22 INVESTIGATOR BRASHEARS: I wouldn't say

1 important but two IDs are better than one.

2 MR. KLAPROTH: I agree. So, what was the
3 purpose of going to The Alibi on June 10, 2016.

4 INVESTIGATOR BRASHEARS: One moment, let me -
5 -

6 MR. KLAPROTH: I'm asking from your memory.

7 INVESTIGATOR BRASHEARS: From my memory we
8 were given a complaint that Mr. Scahill was on
9 the premise.

10 MR. KLAPROTH: So, what was your intent on
11 going to The Alibi?

12 INVESTIGATOR BRASHEARS: To go and verify as
13 to whether Mr. Scahill was on the premise.

14 MR. KLAPROTH: And was it to do an
15 investigation?

16 INVESTIGATOR BRASHEARS: Well, it was monitor
17 to see if Mr. Scahill was on the premise which, I
18 assume, could be labeled an investigation.

19 MR. KLAPROTH: You received training to do
20 investigations, correct?

21 INVESTIGATOR BRASHEARS: Yes, sir.

22 MR. KLAPROTH: In fact, it seems like you

1 have significant experience, I believe over 20
2 years doing investigations, correct?

3 INVESTIGATOR BRASHEARS: Yes, sir.

4 MR. KLAPROTH: And you would agree that it's
5 important to gather evidence during an
6 investigation, correct?

7 INVESTIGATOR BRASHEARS: Yes, sir.

8 MR. KLAPROTH: And it's important to take
9 notes during an investigation, correct?

10 INVESTIGATOR BRASHEARS: Yes, sir.

11 MR. KLAPROTH: Why is it important to take
12 notes?

13 INVESTIGATOR BRASHEARS: Well, to refresh
14 your memory in situations like this, to document
15 the facts.

16 MR. KLAPROTH: Understood, and usually you
17 take those notes at the time of the
18 investigation, correct?

19 INVESTIGATOR BRASHEARS: Yes, sir.

20 MR. KLAPROTH: You didn't take any notes on
21 June 10th, correct?

22 INVESTIGATOR BRASHEARS: I don't recall.

1 MR. KLAPROTH: You don't recall that you took
2 notes or you don't recall if you have notes?

3 INVESTIGATOR BRASHEARS: I don't recall
4 taking notes other than to jot down on the run
5 sheet that Mr. Scahill was at the establishment
6 which constituted a violation.

7 MR. KLAPROTH: If you took notes those would
8 be in the investigative file, correct?

9 INVESTIGATOR BRASHEARS: No, sir.

10 MR. KLAPROTH: Where would the notes be?

11 INVESTIGATOR BRASHEARS: They would be kept
12 in my possession?

13 MR. KLAPROTH: Do you still have those notes?

14 INVESTIGATOR BRASHEARS: If there were notes
15 taken they would be in a file in my desk, yes
16 sir.

17 MR. KLAPROTH: Did you look for those notes
18 prior to testifying today?

19 INVESTIGATOR BRASHEARS: I did not.

20 MR. KLAPROTH: You're aware that a subpoena
21 was requested for you to produce all documents
22 from your investigative file, correct?

1 INVESTIGATOR BRASHEARS: Yes.

2 MR. KLAPROTH: Did you look for those
3 documents such as you had?

4 INVESTIGATOR BRASHEARS: I recall looking for
5 those documents and I don't -- basically I
6 submitted everything I had.

7 MR. KLAPROTH: Okay, so if the notes weren't
8 submitted that means there were no notes?

9 INVESTIGATOR BRASHEARS: That's correct.

10 MR. KLAPROTH: So you first arrived at The
11 Alibi and said you decided to stake it out about
12 fifty feet away, is that right?

13 INVESTIGATOR BRASHEARS: Yes, sir.

14 MR. KLAPROTH: And did you instruct
15 Investigator Cullings to go into The Alibi?

16 INVESTIGATOR BRASHEARS: I did.

17 MR. KLAPROTH: What was the purpose of her
18 going in to The Alibi?

19 INVESTIGATOR BRASHEARS: To do a walk-through
20 of the establishment to see if she could see if
21 Mr. Scahill was on the premise.

22 MR. KLAPROTH: And she already had the

1 passport and driver's license of Mr. Scahill,
2 correct?

3 INVESTIGATOR BRASHEARS: Yes, sir.

4 MR. KLAPROTH: And you verified that,
5 correct?

6 INVESTIGATOR BRASHEARS: Yes, sir.

7 MR. KLAPROTH: I believe you testified that
8 you were standing fifty feet away. Actually, let
9 me take a step back. Where in relation to The
10 Alibi were you when you were fifty feet away?

11 INVESTIGATOR BRASHEARS: Approximately two
12 establishments over.

13 MR. KLAPROTH: So when you say two
14 establishments over, are you aware of the
15 restaurant Hamilton?

16 INVESTIGATOR BRASHEARS: Yes.

17 MR. KLAPROTH: And that's on the south side?

18 INVESTIGATOR BRASHEARS: Yes.

19 MR. KLAPROTH: So, you were on the south side
20 of The Alibi approximately fifty feet away?

21 INVESTIGATOR BRASHEARS: Yes.

22 MR. KLAPROTH: Were you standing out in the

1 open?

2 INVESTIGATOR BRASHEARS: I was standing along
3 the sidewalk, yes sir.

4 MR. KLAPROTH: And there's nothing
5 obstructing your view, correct?

6 INVESTIGATOR BRASHEARS: Not at that time, no
7 sir.

8 MR. KLAPROTH: So, you verified that
9 Investigator Cullings has identification for Mr.
10 Scahill, correct?

11 INVESTIGATOR BRASHEARS: Yes.

12 MR. KLAPROTH: And you instruct her to go
13 inside The Alibi to look for Mr. Scahill,
14 correct?

15 INVESTIGATOR BRASHEARS: Correct.

16 MR. KLAPROTH: And you testified that Mr.
17 Scahill was sitting on the patio, right?

18 INVESTIGATOR BRASHEARS: Correct.

19 MR. KLAPROTH: So, Investigator Cullings
20 walked right past Mr. Scahill, correct?

21 INVESTIGATOR BRASHEARS: Yes.

22 MR. KLAPROTH: And you observed that?

1 INVESTIGATOR BRASHEARS: Yes.

2 MR. KLAPROTH: And she didn't see him,
3 correct?

4 INVESTIGATOR BRASHEARS: Not at that time.

5 MR. KLAPROTH: And you testified that, and
6 correct me if I'm wrong, Investigator Cullings
7 was inside of The Alibi for approximately five to
8 ten minutes, correct?

9 INVESTIGATOR BRASHEARS: Yes.

10 MR. KLAPROTH: How long until she left to go
11 into The Alibi did you observe Mr. Scahill?

12 INVESTIGATOR BRASHEARS: A few minutes after.

13 MR. KLAPROTH: Is it fair to say you observed
14 Mr. Scahill for five to ten minutes, though,
15 approximately?

16 INVESTIGATOR BRASHEARS: Approximately.

17 MR. KLAPROTH: And you just stood there?

18 INVESTIGATOR BRASHEARS: Actually, I walked
19 up the sidewalk a little bit to get a closer
20 view.

21 MR. KLAPROTH: How close did you walk?

22 INVESTIGATOR BRASHEARS: Another ten to

1 fifteen feet up the sidewalk.

2 MR. KLAPROTH: So you're now about 35 feet
3 from The Alibi, or from Mr. Scahill? Give or
4 take, okay. And you have a clear, unobstructed
5 view?

6 INVESTIGATOR BRASHEARS: Yes, sir.

7 MR. KLAPROTH: So, you walked up ten to
8 fifteen feet. What did you do?

9 INVESTIGATOR BRASHEARS: I initially saw Ms.
10 Traverso when Mr. Scahill moved a little closer
11 and was able to get a better view and verify that
12 it was Mr. Scahill.

13 MR. KLAPROTH: So you moved even closer than
14 35 feet.

15 INVESTIGATOR BRASHEARS: No, sir. From the
16 initial fifty to, say, about 35. I just moved up
17 the sidewalk to get a better view to see more
18 closely what was going on.

19 MR. KLAPROTH: Okay, and then you just
20 watched, though, correct?

21 INVESTIGATOR BRASHEARS: Yes.

22 MR. KLAPROTH: For a few minutes?

1 INVESTIGATOR BRASHEARS: Yes, sir.

2 MR. KLAPROTH: Are you issued cameras from
3 ABRA?

4 INVESTIGATOR BRASHEARS: We are not at this
5 time.

6 MR. KLAPROTH: Are you issued a phone?

7 INVESTIGATOR BRASHEARS: I am.

8 MR. KLAPROTH: Do you have a camera on your
9 phone?

10 INVESTIGATOR BRASHEARS: I do.

11 MR. KLAPROTH: You didn't take a photo
12 though, correct?

13 INVESTIGATOR BRASHEARS: I attempted to take
14 a photo but it -- I guess due to the night
15 situation it was blurry. It didn't come out.

16 MR. KLAPROTH: You didn't put that in your
17 report, though, right?

18 INVESTIGATOR BRASHEARS: No, sir, because I -
19 - the photo didn't come out. I mean there was no
20 evidentiary value.

21 MR. KLAPROTH: Well, I think you would agree
22 as an investigator your job is to obtain

1 evidence, not to determine what's valuable,
2 correct?

3 INVESTIGATOR BRASHEARS: Yes.

4 MR. KLAPROTH: So, you deleted that photo?

5 INVESTIGATOR BRASHEARS: Probably not.

6 MR. KLAPROTH: So, you still have that photo?

7 INVESTIGATOR BRASHEARS: I'm not sure.

8 MR. KLAPROTH: You didn't look for that photo
9 before today, though.

10 INVESTIGATOR BRASHEARS: No, sir.

11 MS. DANIELS: Objection, relevance.

12 CHAIRPERSON ANDERSON: The question was
13 already asked and answered, so he gave an answer
14 so -- I'll overrule the objection. I mean, he
15 already answered the question. So, move one.

16 MR. KLAPROTH: So, at this point you tried to
17 take a photo and you make the determination it
18 fails, right? So, you walked up and confronted
19 Ms. Traverso and Mr. Scahill?

20 INVESTIGATOR BRASHEARS: No.

21 MR. KLAPROTH: Why not?

22 INVESTIGATOR BRASHEARS: No, at that point I

1 called Investigator Cullings and alerted her that
2 I had spotted Mr. Scahill and Ms. Traverso on the
3 sidewalk café.

4 MR. KLAPROTH: And what did she say?

5 INVESTIGATOR BRASHEARS: I believe she
6 acknowledged and then came out of the
7 establishment.

8 MR. KLAPROTH: Okay, so you called for
9 backup.

10 INVESTIGATOR BRASHEARS: Well, I wouldn't say
11 backup. I just alerted her to where Mr. Scahill
12 was.

13 MR. KLAPROTH: At that point then, I believe
14 in your earlier testimony about your background
15 and training questioning and interrogating
16 witnesses, correct? But at this point you deemed
17 it was not necessary to walk up to Ms. Traverso
18 and ask, is that Mr. Scahill, correct?

19 INVESTIGATOR BRASHEARS: Correct.

20 MR. KLAPROTH: And, likewise, you didn't walk
21 up to Mr. Scahill and verify that it was Mr.
22 Scahill, correct?

1 INVESTIGATOR BRASHEARS: No.

2 MR. KLAPROTH: So, then Investigator Cullings
3 comes back outside, correct?

4 INVESTIGATOR BRASHEARS: Yes.

5 MR. KLAPROTH: To meet you. Then what
6 happened?

7 INVESTIGATOR BRASHEARS: I entered the
8 establishment. Well, actually I saw Ms. Traverso
9 enter the establishment and then I went into the
10 establishment behind her.

11 MR. KLAPROTH: Okay, where was Mr. Scahill
12 at this point?

13 INVESTIGATOR BRASHEARS: He was still on the
14 sidewalk café.

15 MR. KLAPROTH: So, you walked right past Mr.
16 Scahill?

17 INVESTIGATOR BRASHEARS: I did.

18 MR. KLAPROTH: Did you try to take a photo
19 when you were closer?

20 INVESTIGATOR BRASHEARS: I did not.

21 MR. KLAPROTH: Did you ask him to verify his
22 identity.

1 INVESTIGATOR BRASHEARS: I did not.

2 MR. KLAPROTH: Did you even stop to look at
3 him?

4 INVESTIGATOR BRASHEARS: I viewed him as I
5 walked up. At that point I was convinced that it
6 was him.

7 MR. KLAPROTH: And that's because you had
8 seen him previously, correct?

9 INVESTIGATOR BRASHEARS: Yes, sir.

10 MR. KLAPROTH: You testified that this was, I
11 think, all your investigations were undercover,
12 right?

13 INVESTIGATOR BRASHEARS: Yes. Well, in a
14 convert fashion, basically not displaying a
15 badge.

16 MR. KLAPROTH: Why would you do an undercover
17 investigator if Mr. Scahill and Ms. Traverso both
18 know who you are?

19 INVESTIGATOR BRASHEARS: Well, I'm standing
20 on the street. I'm not going to display a badge
21 to alert anyone to my presence, not just Mr.
22 Scahill or Ms. Traverso, but there are other ABRA

1 establishments and people -- you know, I'm
2 focusing on what they're doing -- I've got a
3 badge displayed, at that point I've no
4 situational awareness behind me, around me, and
5 someone could potentially view me as a police
6 officer or whatnot, so I didn't want anyone to
7 know my status at that point.

8 MR. KLAPROTH: So, members of the public?

9 INVESTIGATOR BRASHEARS: Well, again, I'm
10 focused on what's going on and I'm displaying a
11 badge, someone could mistake me for a police
12 officer and come up on my blind side, so at that
13 point, no I did not have my badge displayed.

14 MR. KLAPROTH: And that was the same for
15 Investigator Cullings, correct?

16 INVESTIGATOR BRASHEARS: I don't recall.
17 Well, she went in in an undercover capacity so
18 she did not have a badge displayed at that time.

19 MR. KLAPROTH: Where on the patio was Mr.
20 Scahill and Ms. Traverso sitting?

21 INVESTIGATOR BRASHEARS: The patio forms sort
22 of -- not really a rectangle, but they were

1 sitting at the table near the door, I want to say
2 one table in from the door.

3 MR. KLAPROTH: Okay, so near the door?

4 INVESTIGATOR BRASHEARS: Yes.

5 MR. KLAPROTH: And when you say one table in,
6 is that to the south side of the door or the
7 north side of the door?

8 INVESTIGATOR BRASHEARS: Well, to the left of
9 the door as you enter the establishment.

10 MR. KLAPROTH: Left of the door? And
11 Hamilton's has a patio right next door, correct?

12 INVESTIGATOR BRASHEARS: Yes, sir.

13 MR. KLAPROTH: Were they sitting at the patio
14 in front of Hamilton's?

15 INVESTIGATOR BRASHEARS: No.

16 MR. KLAPROTH: And how do you know that?

17 INVESTIGATOR BRASHEARS: I walked past the
18 patio for Hamilton's and in my previous dealings
19 with the establishment I was able to see that
20 this was the sidewalk café that was there during
21 my protest report and my monitoring.

22 MR. KLAPROTH: Okay, so then you follow Ms.

1 Traverso into The Alibi, correct?

2 INVESTIGATOR BRASHEARS: Yes.

3 MR. KLAPROTH: How long after she entered?

4 INVESTIGATOR BRASHEARS: Almost immediately.

5 MR. KLAPROTH: And did you approach her at
6 that time?

7 INVESTIGATOR BRASHEARS: I did.

8 MR. KLAPROTH: And it was to set up a meeting
9 for Monday, correct?

10 INVESTIGATOR BRASHEARS: Yes.

11 MR. KLAPROTH: Now, was that the reason for
12 the purpose of the visit to schedule a meeting
13 for Monday?

14 INVESTIGATOR BRASHEARS: My visit was two-
15 fold, monitoring of the establishment and while I
16 was there, since I had the final inspection, I
17 decided to go ahead and speak with her about that
18 meeting as well.

19 MR. KLAPROTH: So, that was the first thing
20 you spoke with her about, right?

21 INVESTIGATOR BRASHEARS: That's correct.

22 MR. KLAPROTH: It's not the fact that you

1 previously just saw Mr. Scahill allegedly,
2 correct?

3 INVESTIGATOR BRASHEARS: That's correct.

4 MR. KLAPROTH: And where's investigator
5 Cullings while you're speaking with Ms. Traverso?

6 INVESTIGATOR BRASHEARS: She had departed the
7 establishment and departed the area, if I
8 remember correctly.

9 MR. KLAPROTH: So, when you say departed the
10 area, she left completely.

11 INVESTIGATOR BRASHEARS: I don't exactly
12 recall. I know she was not in the establishment.

13 MR. KLAPROTH: Did you talk with her after
14 you left the establishment?

15 INVESTIGATOR BRASHEARS: We may have. I
16 don't recall.

17 MR. KLAPROTH: You don't recall that?

18 INVESTIGATOR BRASHEARS: No.

19 MR. KLAPROTH: Did you speak with her from
20 the time from June 10, 2016, from the time she
21 left the establishment until the time you drafted
22 your report?

1 MS. DANIELS: Objection, relevance.

2 MR. KLAPROTH: She's a witness that's going
3 to be called so I'm allowed to establish the
4 foundation for her testimony to impeach her
5 later.

6 CHAIRPERSON ANDERSON: I'll overrule the
7 objection, answer the question.

8 INVESTIGATOR BRASHEARS: I'm sorry, could you
9 repeat --

10 MR. KLAPROTH: I'll repeat the question. So,
11 from the time Ms. Cullings left The Alibi on June
12 10, 2016, and the time you wrote your report, did
13 you speak with Ms. Cullings?

14 INVESTIGATOR BRASHEARS: Yes.

15 MR. KLAPROTH: What did you speak with her
16 about?

17 INVESTIGATOR BRASHEARS: I believe we spoke
18 that night that she had identified Mr. Scahill
19 from the photo.

20 MR. KLAPROTH: Where did you speak with her?

21 INVESTIGATOR BRASHEARS: I don't recall. I
22 don't recall if it was at the same or, you know,

1 later when we got back to the office.

2 MR. KLAPROTH: And you drove in the same car
3 or separate cars?

4 INVESTIGATOR BRASHEARS: I don't recall. I
5 want to say we took separate cars because we had
6 different assignments that night but I can't
7 remember this far past.

8 MR. KLAPROTH: And that's because your memory
9 isn't great of June 10th, is that correct?

10 INVESTIGATOR BRASHEARS: I'm sorry, my
11 memory's not what, sir?

12 MR. KLAPROTH: Your memory isn't great from
13 what happened on June 10th.

14 INVESTIGATOR BRASHEARS: Oh no, I remember
15 the things on June 10th, I just don't remember
16 every minute detail, you know, as time has
17 passed.

18 MR. KLAPROTH: And you testify that you
19 prepared the report shortly after the incident on
20 June 10th, correct?

21 INVESTIGATOR BRASHEARS: Yes.

22 MR. KLAPROTH: What does 'shortly thereafter'

1 mean to you when you say that?

2 INVESTIGATOR BRASHEARS: Well, shortly
3 thereafter -- I mean, investigative reporting,
4 documentation is ongoing as the report is being
5 written but on my team during that time I had 30
6 days in which to complete and submit my report.

7 MR. KLAPROTH: So, 30 days is what you meant
8 when you said 'shortly thereafter.'

9 INVESTIGATOR BRASHEARS: Yes, sir.

10 MR. KLAPROTH: And you had no notes with you
11 to prepare that report, correct?

12 INVESTIGATOR BRASHEARS: Just the
13 recollections of that night and what was
14 documented on the run sheet that night.

15 MR. KLAPROTH: What's a run sheet?

16 INVESTIGATOR BRASHEARS: A run sheet is
17 basically a document detailing an ABRA
18 investigator's establishment visits.

19 MR. KLAPROTH: Is that part of your
20 investigative file?

21 INVESTIGATOR BRASHEARS: No, sir.

22 MR. KLAPROTH: Do you recall what was written

1 on that run sheet?

2 INVESTIGATOR BRASHEARS: I do not. I do not
3 recall, no sir.

4 MR. KLAPROTH: And did you -- are you the one
5 who made those additions to the run sheet about
6 what happened on that night?

7 INVESTIGATOR BRASHEARS: I am.

8 MR. KLAPROTH: When did you do that?

9 INVESTIGATOR BRASHEARS: That night.

10 MR. KLAPROTH: So, you would agree that a run
11 sheet which was taken closer in time to the
12 actual incident on June 10th would be more
13 accurate than your report which was prepared 19
14 days later, correct?

15 INVESTIGATOR BRASHEARS: I wouldn't say more
16 accurate, but it did detail the violation the
17 night of the occurrence.

18 MR. KLAPROTH: And you don't recall what's on
19 that run sheet?

20 INVESTIGATOR BRASHEARS: No, I do not recall
21 at this time what is on the run sheet.

22 MR. KLAPROTH: All right, so just to jump

1 back to where we were, you approached Ms.
2 Traverso and where in the restaurant were you
3 when you approached Ms. Traverso?

4 INVESTIGATOR BRASHEARS: There is an entryway
5 and to the right of the entryway there is what --
6 as I described earlier -- I believe it's got a
7 dishwashing machine, an area for bussing dishes,
8 and we were right inside the doorway to that
9 area.

10 MR. KLAPROTH: How far inside the restaurant
11 were you from the door?

12 INVESTIGATOR BRASHEARS: Maybe ten feet. Ten
13 to 15. It's the very first room to the right of
14 the entryway.

15 MR. KLAPROTH: Okay. And that's the only
16 entrance to the restaurant, correct?

17 INVESTIGATOR BRASHEARS: Well to my knowledge
18 there's the entrance there and there is a
19 separate doorway coming out of the basement at
20 the front of the establishment.

21 MR. KLAPROTH: So there's a doorway coming
22 out of the basement in the front?

1 INVESTIGATOR BRASHEARS: Yes, sir.

2 MR. KLAPROTH: And you can access that from
3 the exterior of the building?

4 INVESTIGATOR BRASHEARS: Yes, sir.

5 MR. KLAPROTH: And have you ever accessed
6 that doorway?

7 INVESTIGATOR BRASHEARS: During my final
8 inspection, the following Monday after this
9 incident, while downstairs I opened the door from
10 the basement and it basically had steps going up
11 to the ground level.

12 MR. KLAPROTH: Is that for deliveries?

13 INVESTIGATOR BRASHEARS: I'm not sure what
14 the purpose is, sir.

15 MR. KLAPROTH: Is it like a storm cellar door
16 or is it an actual physical door?

17 INVESTIGATOR BRASHEARS: I recall it being a
18 physical door.

19 MR. KLAPROTH: All right. So, you speak with
20 Ms. Traverso about this meeting on Monday.

21 INVESTIGATOR BRASHEARS: Yes.

22 MR. KLAPROTH: And she agrees to the meeting?

1 INVESTIGATOR BRASHEARS: Yes.

2 MR. KLAPROTH: And at this time, just to
3 clarify for the record, Investigator Cullings is
4 no longer -- she's outside or you don't know
5 where she is, correct?

6 INVESTIGATOR BRASHEARS: Correct.

7 MR. KLAPROTH: What else did you discuss with
8 Ms. Traverso?

9 INVESTIGATOR BRASHEARS: That was the crux of
10 the conversation until such time that Mr. Scahill
11 entered.

12 MR. KLAPROTH: And then he entered and walked
13 right between you and Rachel?

14 INVESTIGATOR BRASHEARS: Yes, sir.

15 MR. KLAPROTH: How far apart were you and
16 Rachel?

17 INVESTIGATOR BRASHEARS: A few feet.

18 MR. KLAPROTH: And you said Mr. Scahill had
19 met you before, right?

20 INVESTIGATOR BRASHEARS: No, sir.

21 MR. KLAPROTH: What about the protest
22 hearing?

1 INVESTIGATOR BRASHEARS: No, I did not
2 mention to him that I had met him before. I
3 asked Ms. Traverso, 'hey, isn't that Martin?'

4 MR. KLAPROTH: Yeah but you -- I'm sorry, I
5 think my question was unclear. You had met Mr.
6 Scahill prior to June 10th, correct?

7 INVESTIGATOR BRASHEARS: Yes.

8 MR. KLAPROTH: So, he knew who you were?

9 INVESTIGATOR BRASHEARS: I'm not sure if he
10 remembered me or not. He didn't appear to.

11 MR. KLAPROTH: And how close was he to you
12 when he walked past you?

13 INVESTIGATOR BRASHEARS: Right in front of
14 me.

15 MR. KLAPROTH: And you didn't take a photo at
16 that time?

17 INVESTIGATOR BRASHEARS: No.

18 MR. KLAPROTH: And you didn't talk to him?

19 INVESTIGATOR BRASHEARS: No.

20 MR. KLAPROTH: You didn't verify his
21 identify.

22 INVESTIGATOR BRASHEARS: Well, when I asked

1 Ms. Traverso, 'hey isn't that Martin?' I did so
2 getting her to independently identify him which
3 she subsequently did through her actions of
4 telling him to leave the establishment.

5 MR. KLAPROTH: And, on June 10th, did you
6 investigate and verify if there was a bar notice
7 that had been issued then?

8 INVESTIGATOR BRASHEARS: No, I did not. My
9 understanding was that it had been issued.

10 MR. KLAPROTH: So, you're not -- you don't
11 have any evidence or belief that the bar notice
12 was not in effect at that time, correct?

13 INVESTIGATOR BRASHEARS: That's correct.

14 MR. KLAPROTH: And then you stated that Ms.
15 Traverso verified Mr. Scahill independently by
16 telling him to leave, correct?

17 INVESTIGATOR BRASHEARS: Well, she basically
18 told him, 'hey, you're not supposed to be here,
19 you need to get out or I'm going to call the
20 police.'

21 MR. KLAPROTH: And you would agree that the
22 order actually states that's what she's supposed

1 to do if he's present, right?

2 INVESTIGATOR BRASHEARS: Well she's, well
3 basically he's not to be allowed to work on the
4 premise and it appeared to me that he was bussing
5 tables, and that she would notify the police if
6 he were on the premise.

7 MR. KLAPROTH: So, I'm glad you said that.
8 He said -- the order said Mr. Scahill was not
9 allowed to work at the restaurant, correct?

10 INVESTIGATOR BRASHEARS: Yes.

11 MR. KLAPROTH: Did you ever verify if he's
12 issued a W2 by the restaurant?

13 INVESTIGATOR BRASHEARS: I did not.

14 MR. KLAPROTH: Have you checked the payroll
15 records?

16 INVESTIGATOR BRASHEARS: I did not.

17 MR. KLAPROTH: Did you see him serving
18 alcohol?

19 INVESTIGATOR BRASHEARS: I did not.

20 MR. KLAPROTH: Did you see him serving
21 tables?

22 INVESTIGATOR BRASHEARS: I did not.

1 MR. KLAPROTH: You saw him carrying plates.

2 INVESTIGATOR BRASHEARS: Yes, sir.

3 MR. KLAPROTH: And then what happened after
4 Ms. Traverso told him to leave?

5 INVESTIGATOR BRASHEARS: He immediately
6 departed the establishment.

7 MR. KLAPROTH: In your report you speak about
8 the complaint received by ABRA, correct?

9 INVESTIGATOR BRASHEARS: Yes.

10 MR. KLAPROTH: Did you personally receive
11 that complaint?

12 INVESTIGATOR BRASHEARS: I believe it was
13 forwarded to me through a supervisor.

14 MR. KLAPROTH: Okay. That was after June
15 10th, right?

16 INVESTIGATOR BRASHEARS: Well, no. I mean, I
17 was made aware of a complaint on the night of the
18 10th.

19 MR. KLAPROTH: But you just knew that there
20 was a complaint, not the contents of the
21 complaint, other than that Mr. Scahill was seen
22 at The Alibi, correct?

1 INVESTIGATOR BRASHEARS: Correct.

2 MR. KLAPROTH: And, in fact, you write that
3 in your report, correct? That he had been
4 observed working at the establishment, correct?

5 INVESTIGATOR BRASHEARS: Yes, sir.

6 MR. KLAPROTH: When was the last time you
7 viewed that complaint?

8 INVESTIGATOR BRASHEARS: Reviewed that
9 complaint?

10 MR. KLAPROTH: The complaint that was
11 received by ABRA.

12 INVESTIGATOR BRASHEARS: I don't recall.

13 MR. KLAPROTH: Do you know the identity of
14 the individual who filed the complaint?

15 INVESTIGATOR BRASHEARS: I don't recall that,
16 either, sir.

17 MR. KLAPROTH: And do you recall what the
18 basis of the informant who called, since he's
19 identified, what his, the basis of his knowledge
20 for filing that complaint?

21 INVESTIGATOR BRASHEARS: My understanding was
22 --

1 MS. DANIELS: Objection. This calls for
2 speculation.

3 MR. KLAPROTH: It's part of the
4 investigation.

5 CHAIRPERSON ANDERSON: It's sustained. It
6 doesn't matter why a complaint is filed, whether
7 or not -- or the motivation and I think that's
8 just not relevant. The board issued an order
9 saying that Mr. Scahill cannot be on the
10 premises, so whether or not someone had a
11 malicious intent to call -- the rationale or
12 whoever called I don't think is relevant to the
13 proceeding. It's whether or not the board agent
14 went to an investigation and it doesn't
15 necessarily have to be an investigation because
16 someone called. The board agent could have even
17 gone to the restaurant to see whether or not the
18 licensee is compliant with the board order, so
19 I'm going to overrule -- I'm sorry, I'm going to
20 sustain the objection, so move on from that line
21 of questioning, please.

22 MR. KLAPROTH: Sure. If I could just offer

1 proof. The intent of that question was not to
2 establish the malicious content of the
3 complainant but rather to show the accuracy of
4 Mr. Brashear's report and how he conveyed what
5 that complaint contained.

6 CHAIRPERSON ANDERSON: And I'll say this to
7 you, I mean I'm reviewing the board order. The
8 board order clearly states that he should not be
9 there. He shouldn't be employed, and so, I know
10 you've been spending a lot of time talking about
11 whether or not -- what he was doing, but just by
12 looking at the board order, he's not supposed to
13 be there, period, and so I'm just saying -- I'm
14 following your line of questioning but I'm just
15 saying I'm reviewing the board order to see what
16 the board order says.

17 MR. KLAPROTH: Sir, I would just respectfully
18 request that the board does not make its
19 determination until all the evidence is --

20 CHAIRPERSON ANDERSON: The board is not --
21 I'm not making any determination, I'm just
22 stating what the board order states, so I'm not

1 making a decision. I know that you're asking
2 questions about whether or not he was employed
3 but I'm just saying just in asking the questions
4 just look at the board order, what the board
5 order actually asks that the licensee do. But we
6 can move on.

7 MR. KLAPROTH: I'll move on. So, just to
8 clarify -- [inaudible ABRA2 00:01] -- Mr.
9 Scahill's presence at The Alibi June 10th, 2016,
10 is that correct?

11 INVESTIGATOR BRASHEARS: I'm not sure I
12 follow.

13 MR. KLAPROTH: You didn't take any
14 photographs or get any statements from witnesses,
15 correct?

16 INVESTIGATOR BRASHEARS: No, sir, other than
17 my visual identification.

18 MR. KLAPROTH: Okay. And after June 10th you
19 followed up and continued to monitor The Alibi,
20 is that correct?

21 INVESTIGATOR BRASHEARS: That's correct.

22 MR. KLAPROTH: And was that pursuant to a

1 monitoring investigation -- a monitoring
2 assignment or is that on your own behest?

3 INVESTIGATOR BRASHEARS: I believe it was
4 probably both. I'm sure it recurred on the
5 monitoring list and I was probably told by a
6 supervisor to follow up on it since there had
7 been a previous violation.

8 MR. KLAPROTH: And you went on June 13th and
9 June 17th looking for Mr. Scahill, correct?

10 INVESTIGATOR BRASHEARS: That is correct.

11 MR. KLAPROTH: All right, so let's jump
12 forward to July 8, 2016.

13 MR. ADAMS: Just for the record, I did give
14 Mr. Brashears a bottle of water. There's nothing
15 else but just a bottle. Just for the record so
16 there's no question.

17 MR. KLAPROTH: No objection.

18 INVESTIGATOR BRASHEARS: I appreciate it,
19 thank you.

20 MR. ADAMS: No problem.

21 MR. KLAPROTH: All right, so did you
22 investigate anytime between June 17th, 2016 and

1 July 5, 2016, The Alibi?

2 INVESTIGATOR BRASHEARS: June 5th?

3 MR. KLAPROTH: June 17th and just to refresh
4 your recollection I'm looking at exhibit 2 page 3
5 which is in the report.

6 INVESTIGATOR BRASHEARS: Exhibit #2.

7 CHAIRPERSON ANDERSON: Can you repeat the
8 question? I was somewhat distracted up here, so
9 I apologize.

10 MR. KLAPROTH: Sure, so the question was did
11 you monitor or investigate The Alibi between June
12 17, 2016, and July 5, 2016?

13 INVESTIGATOR BRASHEARS: I don't recall. It
14 states in my report but as time passed I don't
15 recall.

16 MR. KLAPROTH: All right, so you began your
17 investigation again of The Alibi, though, in
18 July. You agree, correct?

19 INVESTIGATOR BRASHEARS: For case #00600,
20 yes, that's correct.

21 MR. KLAPROTH: And what prompted that
22 reinstituted investigation?

1 INVESTIGATOR BRASHEARS: If I recall, it was
2 basically follow-up monitoring due to a
3 substantiated previous complaint.

4 MR. KLAPROTH: So, when you talk about
5 previous complaint, you're discussing, you're
6 referring to the one on June 10th?

7 INVESTIGATOR BRASHEARS: Yes.

8 MR. KLAPROTH: But you have no recollection
9 of anything occurring between June 10th and the
10 5th of July.

11 INVESTIGATOR BRASHEARS: Well, I know I
12 stopped by and checked. I don't recall the exact
13 dates. I believe they're covered in the report
14 here.

15 MR. KLAPROTH: And when you say the report,
16 what are you referring to? Exhibit #2?

17 INVESTIGATOR BRASHEARS: #16-CMP-00600.

18 MR. KLAPROTH: So, you're referring to
19 Plaintiff's Exhibit #3 for the record. All
20 right, so then when did you go to The Alibi for
21 the second investigation in July 8, 2016?

22 INVESTIGATOR BRASHEARS: Approximately 11:40

1 p.m.

2 MR. KLAPROTH: And I believe you testified
3 that you don't recall if you were by yourself.

4 INVESTIGATOR BRASHEARS: No, that evening I
5 was by myself.

6 MR. KLAPROTH: All right. So, you approached
7 The Alibi at approximately 11:40 I think you
8 testified earlier, correct?

9 INVESTIGATOR BRASHEARS: Yes, sir.

10 MR. KLAPROTH: Were the lights on?

11 INVESTIGATOR BRASHEARS: Yes, sir, inside the
12 bar, yes, sir.

13 MR. KLAPROTH: Was there a sign that said
14 open or closed?

15 INVESTIGATOR BRASHEARS: I don't recall a
16 sign, sir.

17 MR. KLAPROTH: And how about -- so you said
18 the lights were on in the bar and you saw that
19 through a window, through the door?

20 INVESTIGATOR BRASHEARS: Through the window.
21 There's a window to the left of the entryway door
22 and it aligns with the bar.

1 MR. KLAPROTH: And what about curtains? Were
2 there curtains on the window?

3 INVESTIGATOR BRASHEARS: I believe there
4 were.

5 MR. KLAPROTH: And how did you see in the
6 bar? You just saw light illuminating around the
7 curtains?

8 INVESTIGATOR BRASHEARS: No, the partially
9 open, the end set of windows right nearest the
10 entry door were unobstructed.

11 MR. KLAPROTH: And it was at this point you
12 testified you saw Mr. Scahill inside, right?

13 INVESTIGATOR BRASHEARS: Yes.

14 MR. KLAPROTH: He was standing near the bar.

15 INVESTIGATOR BRASHEARS: And now was he
16 directly across from you or was he to the left at
17 an angle?

18 INVESTIGATOR BRASHEARS: He was near the end
19 of the bar which was almost straight ahead from
20 where I was looking.

21 MR. KLAPROTH: The end of the bar meaning
22 north or south?

1 INVESTIGATOR BRASHEARS: The end of the bar
2 closest to the entrance which is to the right.

3 MR. KLAPROTH: And the lights were on,
4 correct?

5 INVESTIGATOR BRASHEARS: Yes, sir.

6 MR. KLAPROTH: And you had an unobstructed
7 view of him, correct?

8 INVESTIGATOR BRASHEARS: Yes, sir.

9 MR. KLAPROTH: And at that time you took a
10 photo of him, correct?

11 INVESTIGATOR BRASHEARS: No, sir.

12 MR. KLAPROTH: Why not?

13 INVESTIGATOR BRASHEARS: Well, once again, I
14 had visually identified him and it was my
15 intention to go into the establishment and find
16 him.

17 MR. KLAPROTH: Well, you testified earlier
18 you thought it was important for an investigator
19 who goes with you to have independent
20 verification or ID identification of Mr. Scahill,
21 so at this point you're travelling by yourself.

22 INVESTIGATOR BRASHEARS: Correct.

1 MR. KLAPROTH: You didn't think it was
2 necessary to take a photo to independently
3 verify?

4 INVESTIGATOR BRASHEARS: No, sir, because at
5 that point I found that the first incident was
6 confirmed that he was at the establishment and,
7 you know, at this point I'm like 'I'm going to
8 drive by, I'm going to check to see if he's
9 there, and if he is I would independently
10 identify' because, you know, the first time was a
11 very obvious -- what I believe to be a very
12 obvious -- violation of the board order.

13 MR. KLAPROTH: You had your camera with you,
14 though, on your phone, right?

15 INVESTIGATOR BRASHEARS: Yes.

16 MR. KLAPROTH: And you didn't attempt to take
17 a photo like you did on the previous occasion
18 just to clarify?

19 INVESTIGATOR BRASHEARS: No, sir, I didn't.
20 I didn't bother due to the previous attempt. The
21 cameras on our phones are not necessarily the
22 best.

1 MR. KLAPROTH: And, again, you were
2 undercover, right?

3 INVESTIGATOR BRASHEARS: Yes.

4 MR. KLAPROTH: And why were you undercover on
5 this occasion?

6 INVESTIGATOR BRASHEARS: Well, once again I
7 was approaching and monitoring the establishment.
8 I didn't want anyone in the surrounding area
9 alerted to ABRA's presence. And if I can
10 clarify, the difference for undercover, non-
11 undercover for an ABRA investigator is literally
12 whether the badge is displayed or it isn't.

13 MR. KLAPROTH: So, you're not wearing
14 costumes or disguises?

15 INVESTIGATOR BRASHEARS: No.

16 MR. KLAPROTH: Okay. All right, so you tried
17 to open the door and it's locked, right?

18 INVESTIGATOR BRASHEARS: Yes, sir.

19 MR. KLAPROTH: So, at that point did it
20 appear to you the establishment was closed?

21 INVESTIGATOR BRASHEARS: Yes, it did.

22 MR. KLAPROTH: And you knocked on the door?

1 INVESTIGATOR BRASHEARS: Yes, sir.

2 MR. KLAPROTH: Why did you do that?

3 INVESTIGATOR BRASHEARS: To try -- to attempt
4 to gain entry.

5 MR. KLAPROTH: Why was that important?

6 INVESTIGATOR BRASHEARS: Because I wanted to
7 see if Mr. Scahill was -- wanted to go inside and
8 verify his presence.

9 MR. KLAPROTH: I thought you already verified
10 his presence.

11 INVESTIGATOR BRASHEARS: I did but I wanted
12 to go in and see him inside the establishment in
13 a -- basically wanted to go in and basically find
14 him there.

15 MR. KLAPROTH: But you didn't, right?

16 INVESTIGATOR BRASHEARS: No.

17 MR. KLAPROTH: So, just to clarify, when you
18 knocked on the door you thought it was important
19 to go verify that he was present inside. You
20 thought that was necessary as part of your
21 investigation, right?

22 INVESTIGATOR BRASHEARS: Well, I wanted to go

1 in and basically ascertain the situation.

2 MR. KLAPROTH: Because you didn't have enough
3 evidence at that point, correct?

4 INVESTIGATOR BRASHEARS: No, I had evidence.
5 I mean, I visually identified him from the
6 outside. I basically wanted to go inside and see
7 what the establishment had to say concerning the
8 situation.

9 MR. KLAPROTH: Okay. And then you went
10 inside, you didn't see him, right?

11 INVESTIGATOR BRASHEARS: Correct.

12 MR. KLAPROTH: And then you asked Ms.
13 Traverso if Mr. Scahill was present, correct?

14 INVESTIGATOR BRASHEARS: Correct.

15 MR. KLAPROTH: And she said no.

16 INVESTIGATOR BRASHEARS: She stated he was
17 not.

18 MR. KLAPROTH: And then you canvassed the
19 entire inside of the establishment, correct?

20 INVESTIGATOR BRASHEARS: No, I did not.

21 MR. KLAPROTH: Why not?

22 INVESTIGATOR BRASHEARS: Because at that

1 point -- at that point I'd already spotted him
2 through the window, verified what I believed that
3 he was at the establishment and, to be honest, it
4 was 11:40 at night and I was not going to, you
5 know, play hide and go seek in the establishment.
6 I had verified he was there. Once again, to me,
7 it was a blatant violation of the board order
8 and, you know, I wasn't going to go floor to
9 floor and have him slip out the basement door.
10 To me it was irrelevant at that point. I had
11 already verified he was there.

12 MR. KLAPROTH: Mr. Brashears, you are aware
13 Mr. Scahill's son works at The Alibi, right?

14 INVESTIGATOR BRASHEARS: No, I was not.

15 MR. KLAPROTH: Have you ever seen a
16 photograph of Mr. Scahill's son?

17 INVESTIGATOR BRASHEARS: I have not.

18 MR. KLAPROTH: Would it surprise you that he
19 looks like Mr. Scahill?

20 INVESTIGATOR BRASHEARS: No, sir, that would
21 not.

22 MR. KLAPROTH: And at no point on either July

1 8, 2016, or June 10th, 2016, did you speak to Mr.
2 Scahill to confirm his identity?

3 INVESTIGATOR BRASHEARS: No. I felt Ms.
4 Traverso had done that.

5 MR. KLAPROTH: When you went in to speak --
6 on July 8, 2016 -- when you went in to speak with
7 Ms. Traverso, how long were you inside the
8 establishment?

9 INVESTIGATOR BRASHEARS: Less than five
10 minutes.

11 MR. KLAPROTH: The board's indulgence? Mr.
12 Brashears, I just have a few more questions. If
13 I can redirect your attention -- I'm sorry we
14 keep jumping around, but if I can redirect your
15 attention to the first alleged violation
16 occurring on June 10, 2016.

17 INVESTIGATOR BRASHEARS: Yes, sir?

18 MR. KLAPROTH: You would agree that the board
19 order requires The Alibi to call MPD if Mr.
20 Scahill is present on the premises of The Alibi,
21 correct?

22 INVESTIGATOR BRASHEARS: Correct.

1 MR. KLAPROTH: And, just to clarify it's
2 if the establishment has reason to believe Mr.
3 Scahill is present then they have to call MPD,
4 correct?

5 INVESTIGATOR BRASHEARS: That's correct.

6 MR. KLAPROTH: And you would agree that when
7 you followed up on that investigation to see if
8 Ms. Traverso had called MPD -- you did follow up
9 to see if she had called MPD, correct?

10 INVESTIGATOR BRASHEARS: Correct.

11 MR. KLAPROTH: And she stated that she did,
12 correct?

13 INVESTIGATOR BRASHEARS: Correct.

14 MR. KLAPROTH: So, you would agree that
15 that's compliant with the board order, correct?

16 INVESTIGATOR BRASHEARS: Well, yes, but I was
17 not able to verify that.

18 MR. KLAPROTH: What else did you do to verify
19 that?

20 INVESTIGATOR BRASHEARS: Well, there was no
21 written document, there was nothing showing from
22 her perspective, or from the establishment's

1 perspective, that a notification was made. I was
2 informed that it was not a 911 call, that it was
3 basically to the local police detachment and they
4 did not send anyone because Mr. Scahill had
5 departed the establishment prior to her call.
6 They also typically would -- I would have checked
7 the calls to service but, unfortunately, the
8 calls to service to an establishment are only
9 recorded if a police presence is dispatched.

10 MR. KLAPROTH: But, you would agree it
11 doesn't say anywhere in the board order that she
12 has to call 911, or anyone from The Alibi has to
13 call 911, it says MPD.

14 INVESTIGATOR BRASHEARS: It says MPD, that is
15 correct, sir.

16 MR. KLAPROTH: And you have no reason to
17 believe that she didn't do that, correct?

18 INVESTIGATOR BRASHEARS: No, sir.

19 MR. KLAPROTH: Nothing further.

20 CHAIRPERSON ANDERSON: What I'm going to do
21 is that I'm going to allow you to cross examine
22 the witness. I'm sorry, to redirect, ask

1 redirect questions of the witness, the board will
2 ask questions and then you will also get a chance
3 to do that and then we're going to take a break
4 for lunch. Then we're going to reconvene at 1:30
5 after we're done with this, okay?

6 MR. KLAPROTH: Thank you, Mr. Chairman.

7 MR. ADAMS: Mr. Chairman, if you don't mind,
8 if there's no objection I'll handle the redirect.

9 MR. KLAPROTH: No objection.

10 CHAIRPERSON ANDERSON: Go ahead, Mr. Adams.

11 MR. ADAMS: Mr. Brashears, earlier in the
12 direct examination you were referring to the
13 order -- you were discussing the issue regarding
14 when Ms. Traverso was required to call MPD,
15 correct?

16 INVESTIGATOR BRASHEARS: Yes.

17 MR. ADAMS: And what was the circumstances
18 when they occur?

19 INVESTIGATOR BRASHEARS: If Mr. Scahill were
20 to enter the -- or be on the premises.

21 MR. ADAMS: And I noticed on direct
22 examination there was a question whether or not

1 she had reason to believe that Mr. Scahill was on
2 the premises. Do you recall that?

3 INVESTIGATOR BRASHEARS: Yes.

4 MR. ADAMS: So, for the first investigation
5 for the June 10th and based upon your experience
6 and your observations, can you describe whether
7 the establishment or Ms. Traverso would have had
8 reason to believe that Mr. Scahill was on the
9 premises?

10 INVESTIGATOR BRASHEARS: Well, yes, I mean
11 when I said 'hey, wasn't that Martin?' she
12 immediately, 'hey, you can't be here and I'm
13 calling the police,' and he immediately departed,
14 so if it weren't Mr. Scahill why would that
15 conversation take place and why would he depart?

16 MR. ADAMS: And how about prior to that
17 discussion? I believe in your testimony you were
18 talking regarding, I believe when you recollect a
19 conversation with Ms. Traverso and another
20 person, can you describe that again?

21 INVESTIGATOR BRASHEARS: You mean on the
22 sidewalk café?

1 MR. ADAMS: Yes, on the sidewalk café.

2 INVESTIGATOR BRASHEARS: Yes, I mean they
3 appeared to be just sitting and having something
4 to eat and conversing on the sidewalk in a very
5 casual fashion.

6 MR. ADAMS: And was that at separate tables,
7 same table, how can you?

8 INVESTIGATOR BRASHEARS: Sitting across from
9 one another at a table.

10 MR. ADAMS: And approximately how far do you
11 recollect they were at that point?

12 INVESTIGATOR BRASHEARS: From me or apart
13 from each other?

14 MR. ADAMS: From each other.

15 INVESTIGATOR BRASHEARS: Just across the
16 table, three to five feet.

17 MR. ADAMS: All right, very well. And so, in
18 terms of your conclusion about whether or not the
19 establishment would have reason to believe that
20 Mr. Scahill was on the premises, can you tell us
21 whether or not that was part of your analysis?
22 That portion when they were talking to each

1 other?

2 INVESTIGATOR BRASHEARS: Well, yes, I mean at
3 that point I recognized Mr. Scahill from my
4 interactions with him and the photos. I
5 basically stayed and surveilled to see what
6 happened and when they broke apart I followed her
7 inside.

8 MR. ADAMS: And actually now in terms of your
9 recognition of him, approximately what was the
10 age of the person that you recognized to be Mr.
11 Scahill?

12 INVESTIGATOR BRASHEARS: Well, 45 to 50 years
13 old.

14 MR. ADAMS: And based upon what you observed
15 on both June 10th and in July, was that the
16 approximate age of the person you observed?

17 INVESTIGATOR BRASHEARS: Yes.

18 MR. ADAMS: And returning to July 8th of
19 2016, you again -- you state again where you're
20 going back to this question about whether you
21 have reason -- the establishment would have
22 reason to believe Mr. Scahill was on -- was at

1 the establishment, what, based upon your
2 observations and your knowledge of the
3 establishment, what would give reason for you to
4 conclude whether or not the establishment would
5 have known that Mr. Scahill was on the premises
6 in July?

7 INVESTIGATOR BRASHEARS: Well, I mean, the
8 fact that -- the fact that she addressed him in
9 the manner of, 'hey, you can't be here, you know
10 you're not supposed to be here, I'm going to call
11 the police' and then she further relayed to me
12 that he had been coming to the establishment in
13 league with a bartender attempting to get the
14 establishment in trouble, basically telling me
15 that yes, it was him, and that he had been
16 recurring coming to the establishment.

17 MR. ADAMS: And just to be clear, and thank
18 you for your answer, but I'm talking about July,
19 I believe this was when the establishment was
20 already closed.

21 INVESTIGATOR BRASHEARS: Oh, sorry.

22 MR. ADAMS: What would have given you reason

1 -- what would give you reason to conclude that
2 the establishment would have known that Mr.
3 Scahill was present at that time?

4 INVESTIGATOR BRASHEARS: Oh, well, when I
5 basically asked if Martin were around, the
6 employee stated that 'he's standing next to
7 Rachel at the bar,' which I had viewed him
8 through the window next to the bar, so she
9 substantiated that I had seen him at that point.

10 MR. ADAMS: That time was the only person's
11 name or did you use any other person's name?

12 INVESTIGATOR BRASHEARS: No.

13 MR. ADAMS: So, it was definitely Martin.

14 INVESTIGATOR BRASHEARS: Martin.

15 MR. ADAMS: Okay. And by the way, I
16 apologize -- okay, so in terms for that as to
17 that, how long were you there -- I mean, how long
18 did you make this observation of Mr. Scahill
19 being at the bar? Can you tell us what that --

20 INVESTIGATOR BRASHEARS: Through the window?

21 MR. ADAMS: Through the window, yes.

22 INVESTIGATOR BRASHEARS: Less than a minute.

1 MR. ADAMS: Okay, and why were you certain
2 that you had made identification at that point?

3 INVESTIGATOR BRASHEARS: Because I have
4 previously had dealings with Mr. Scahill. I had
5 seen him so I recognized him.

6 MR. ADAMS: Okay. Now, you were asked some
7 questions about taking photographs. Well, first
8 let's get the question of taking photographs. In
9 June, for the sidewalk café incident, you were
10 asked whether or not you took a photograph of Mr.
11 Scahill. For purposes of your investigation is
12 taking -- can you tell us whether or not taking a
13 photograph is necessary?

14 INVESTIGATOR BRASHEARS: Well, in most
15 instances you want to attempt to get as much
16 evidence as you can and that's one of the reasons
17 I attempted to take the photo, but as I said due
18 to the camera's limitations and the lighting
19 conditions, the photo was -- you know, you
20 couldn't recognize anything, it was blurred.

21 MR. ADAMS: So essentially we are relying
22 upon your word, so what is about your word or

1 anything else within your investigation would
2 allow the board to think that your word is
3 enough?

4 INVESTIGATOR BRASHEARS: Well, again, it's
5 not just my word. When I went in I posed the
6 question, 'hey wasn't that Martin?' to get Ms.
7 Traverso to independently identify the
8 individual. To me, my visual identification plus
9 her acknowledgement that he's on the premise was
10 enough to meet a violation of the board order.

11 MR. ADAMS: Well, let me ask this. In terms
12 of photographs and the course of your
13 investigations, to what extent would a photograph
14 have been necessary in order to substantiate a
15 violation?

16 INVESTIGATOR BRASHEARS: Would it have been
17 necessary?

18 MR. ADAMS: Yes, would it have been
19 necessary?

20 INVESTIGATOR BRASHEARS: Well, I mean I
21 wouldn't feel that it would be. My visual
22 recognition of the individual.

1 MR. KLAPROTH: Objection. This goes to the
2 weighing of evidence.

3 CHAIRPERSON ANDERSON: I'm sorry, I can't
4 hear you, sir.

5 MR. KLAPROTH: Objection. This is -- the
6 witness isn't to weigh evidence, that's the
7 board's providence.

8 MR. ADAMS: Well, it was asked several times
9 on cross, this question about whether or not he
10 took a photograph and would it have been the best
11 practices for him to take a photograph, so I
12 think it goes directly to what's already been
13 asked?

14 MR. KLAPROTH: Whether that meets sufficient
15 evidence required is not for the witness to
16 determine, it's for the board.

17 INVESTIGATOR BRASHEARS: Well, it wasn't --

18 CHAIRPERSON ANDERSON: I need to make a
19 ruling, so you need to stay out of it --

20 INVESTIGATOR BRASHEARS: Yes, sir.

21 CHAIRPERSON ANDERSON: -- until I decide.

22 INVESTIGATOR BRASHEARS: Yes, sir.

1 CHAIRPERSON ANDERSON: I'm going to overrule
2 the objection. So, you can answer the question.

3 MR. ADAMS: You can answer the question.

4 INVESTIGATOR BRASHEARS: So, I wasn't doing
5 it as a thing of weighing evidence. It was --
6 did it meet -- did it meet the requirements for a
7 violation? That's how I viewed it. And I
8 believed at the time my visual identification
9 plus an acknowledgement from Ms. Traverso met the
10 violation.

11 MR. ADAMS: And I'll ask you the same
12 questions about necessity in terms of actually
13 stopping the person who you believed to be Mr.
14 Scahill. Can you explain for your purposes
15 whether that was necessary?

16 INVESTIGATOR BRASHEARS: Well, no, and the
17 reason I say that, as an ABRA investigator I
18 investigate the establishment and I interact with
19 the ownership of the establishment. Mr. Scahill
20 is not an owner and he's not supposed to be
21 there, and to be honest, I have no authority over
22 him and also I didn't want any kind of physical

1 confrontation of an issue or anything that could
2 come from that. I dealt strictly with the ABC --
3 well, actually in this case the owner.

4 MR. ADAMS: I'm just going to consult with my
5 co-counsel. Earlier, in the very beginning of
6 the cross, you were asked regarding questions
7 about -- I guess about the photograph or when you
8 were at the sidewalk café, whether or not you
9 attempted to create a photograph, you say you
10 made an attempt but it was blurry and you did not
11 keep it as part of the file. Can you describe to
12 the board why you did not keep or use that
13 photograph as part of your file?

14 INVESTIGATOR BRASHEARS: Well, it -- nothing
15 was identifiable. It came out as a huge blur.
16 And other than for me to be able to testify and
17 say, 'hey I took this photo and it did not come
18 out, this is it,' I mean, it did not support --
19 it did not support the violation.

20 MR. ADAMS: And based upon I guess the
21 policies of your agency, is including such
22 information important -- or required?

1 INVESTIGATOR BRASHEARS: No, not to my
2 knowledge.

3 MR. ADAMS: I have no further questions for
4 Mr. Brashears.

5 MR. KLAPROTH: I just have a few. I'll be
6 quick.

7 CHAIRPERSON ANDERSON: No, you're going to
8 get -- I'm going to have the board ask questions
9 and --

10 MR. KLAPROTH: Okay.

11 CHAIRPERSON ANDERSON: I'm going to have the
12 board ask questions, then you can ask your
13 questions and then I'll end up with the
14 government asking. So, the board is going to ask
15 questions now, so you can ask your questions
16 based on the questions -- you can ask your
17 questions then.

18 MR. KLAPROTH: Thank you, Mr. Chairman.

19 CHAIRPERSON ANDERSON: All right, Mr. Short?

20 MR. SHORT: Good afternoon, Mr. Brashears,
21 Investigator Brashears.

22 INVESTIGATOR BRASHEARS: Good afternoon.

1 MR. SHORT: I guess the question I want to
2 ask is you were aware of the board order that Mr.
3 Scahill could not be there period.

4 INVESTIGATOR BRASHEARS: Correct.

5 MR. SHORT: Was he there?

6 INVESTIGATOR BRASHEARS: Yes sir, I believe
7 he was.

8 MR. SHORT: You saw him there.

9 INVESTIGATOR BRASHEARS: Yes, sir.

10 MR. SHORT: Against the board order?

11 INVESTIGATOR BRASHEARS: Yes, sir.

12 MR. SHORT: That's all I have, Mr. Chair,
13 thank you.

14 CHAIRPERSON ANDERSON: Any other questions?
15 Mr. Alberti?

16 MR. ALBERTI: Investigator Brashears, thank
17 you for your report. You said earlier that on
18 June 10th you saw them -- you saw Ms. Traverso
19 and Mr. Scahill sitting at a table on the
20 sidewalk café.

21 INVESTIGATOR BRASHEARS: Yes, sir.

22 MR. ALBERTI: When asked where that was, you

1 said it was to the left of the entryway door, is
2 that correct?

3 INVESTIGATOR BRASHEARS: Yes.

4 MR. ALBERTI: All right. When you were
5 saying left, do you mean left facing or facing
6 away?

7 INVESTIGATOR BRASHEARS: As you're facing the
8 front door of the establishment, the sidewalk
9 café and the table that I mentioned was to the
10 left of the front door.

11 MR. ALBERTI: Okay, as you're facing the
12 front door?

13 INVESTIGATOR BRASHEARS: Yes, sir.

14 MR. ALBERTI: As you're facing the front
15 door, where is the establishment which -- we've
16 established that the establishment Hamilton is
17 next door.

18 INVESTIGATOR BRASHEARS: Yes, sir.

19 MR. ALBERTI: Is it immediately next door?

20 INVESTIGATOR BRASHEARS: Yes, sir.

21 MR. ALBERTI: Okay. Which direction is it?
22 As you're facing the front door is it to the left

1 or two the right?

2 INVESTIGATOR BRASHEARS: It's to the right of
3 the front door.

4 MR. ALBERTI: Okay, thank you. On June 10th,
5 you describe Mr. Scahill's actions in the
6 establishment as bussing tables. Can you
7 describe his activities or what he was doing that
8 led you to that conclusion and to describe it
9 that way?

10 INVESTIGATOR BRASHEARS: As I stated when I
11 first arrived Mr. Scahill and Ms. Traverso were
12 eating, there were plates and dishes and glasses
13 between them. After I followed Ms. Traverso in,
14 Mr. Scahill came in carrying like plates, dishes
15 and things. I don't know if it was from the
16 table they were eating at, but he was carrying
17 dishes into the -- what I would refer to as the
18 clipper area where dishes -- the dish machine is.

19 MR. ALBERTI: When you say he was carrying
20 them into it, what does that mean? Did he walk
21 through the door? What did he do?

22 INVESTIGATOR BRASHEARS: He walked through

1 the door, walked between us and walked right to
2 the clipper area and I would add with what
3 appeared to be a familiarity.

4 MR. ALBERTI: What did he do with the dishes
5 at that point?

6 INVESTIGATOR BRASHEARS: He set them down and
7 when I stated, 'hey, wasn't that Martin?' I
8 couldn't see -- he went around behind the clipper
9 area and that's when Ms. Traverso --

10 MR. ALBERTI: He went around? You saw him go
11 around the clipper?

12 INVESTIGATOR BRASHEARS: Yes.

13 MR. ALBERTI: Okay.

14 INVESTIGATOR BRASHEARS: And then I couldn't
15 see him for a moment and that's when Ms. Traverso
16 went, 'hey, you can't be here, you've gotta go.'

17 MR. ALBERTI: What do you mean she went? Did
18 she go over?

19 INVESTIGATOR BRASHEARS: She walked past me
20 around to where he was.

21 MR. ALBERTI: All right. Did you see them
22 while they were conversing?

1 INVESTIGATOR BRASHEARS: No.

2 MR. ALBERTI: You heard them.

3 INVESTIGATOR BRASHEARS: Yes.

4 MR. ALBERTI: We had much discussion over
5 this photo that didn't turn out. Where were you
6 standing when you took that photo? How far away?

7 INVESTIGATOR BRASHEARS: That was when I had
8 moved closer. I was, I believe I testified
9 earlier, approximately 35 feet.

10 MR. ALBERTI: 35 feet away when you attempted
11 to take that photo?

12 INVESTIGATOR BRASHEARS: Yes, sir.

13 MR. ALBERTI: Thank you, I have no further
14 questions.

15 CHAIRPERSON ANDERSON: Are there any other
16 questions by any other board members? I just
17 have one question. This is regarding your visit
18 on July 8th. How sure are you that this was
19 actually -- that this was Mr. Scahill that was in
20 the establishment on July 8th.

21 INVESTIGATOR BRASHEARS: I'm positive. I
22 mean, when, in my previous dealing with him we

1 came face to face, so I had a very good -- very
2 good view of Mr. Scahill.

3 CHAIRPERSON ANDERSON: All right, thanks.
4 You can ask some questions, sir. You can ask
5 questions based on the board's questions if you
6 wanted to. I'll give you some leeway to ask a
7 couple of questions on the government, but I
8 would prefer that the basis of your questions be
9 on the board's questions.

10 MR. KLAPROTH: Sure, I'll try to keep it
11 within 10 minutes. Just to follow up on the
12 photograph that you took that we don't have, it
13 was blurred, correct?

14 INVESTIGATOR BRASHEARS: Correct.

15 MR. KLAPROTH: And is that because of the
16 lighting conditions?

17 INVESTIGATOR BRASHEARS: I'm not sure if it
18 was the lighting conditions, the camera's
19 aperture, I'm not really sure. The photo just
20 didn't come out.

21 MR. KLAPROTH: So, with respect to the June
22 10, 2016, incident, you testified that Ms.

1 Traverso said, 'hey, you know you're not supposed
2 to be there' or something to that effect and
3 asked Mark to leave, correct?

4 INVESTIGATOR BRASHEARS: Correct.

5 MR. KLAPROTH: You would agree that she did
6 not do anything to intend to permit Mr. Scahill
7 to be there, correct?

8 INVESTIGATOR BRASHEARS: I can't answer that.

9 MR. KLAPROTH: Do you have any evidence to
10 suggest that she intended for him to be there?

11 INVESTIGATOR BRASHEARS: I don't have any
12 evidence either way other than the fact that he
13 was at the establishment.

14 MR. KLAPROTH: Okay, but you can't testify to
15 Ms. Traverso's intent, correct?

16 INVESTIGATOR BRASHEARS: Absolutely not.

17 MR. KLAPROTH: With respect to the June 10,
18 2016, incident where you allegedly saw Mr.
19 Scahill, based on your observations and your
20 investigation, did anything you observed appear
21 to affect the peace, order, quiet of the
22 neighborhood?

1 MR. ADAMS: Objection.

2 MS. DANIELS: Objection.

3 MR. ADAMS: Go ahead.

4 MS. DANIELS: Beyond the scope and relevance.

5 MR. KLAPROTH: I think it's directly relevant
6 because it goes directly to the basis for the
7 violation.

8 CHAIRPERSON ANDERSON: I'm going to sustain
9 the objection.

10 MR. KLAPROTH: For the record, with respect
11 to the July 8, 2016, incident, did anything you
12 observed on the day in question or part of your
13 investigation show that Mr. Scahill's alleged
14 appearance at The Alibi impacted the peace,
15 order, quiet for the neighborhood.

16 MR. ADAMS: Objection. The same reason,
17 beyond the scope and irrelevant.

18 CHAIRPERSON ANDERSON: It's the same
19 question, so I'm going to sustain the objection.
20 I mean, there's no -- at no point did we ever
21 talk about peace, order and quiet so I'm not
22 quite sure why we're having this conversation on

1 the cross. So, let's move on from peace, order
2 and quiet.

3 MR. KLAPROTH: Nothing further, Mr. Chairman.

4 MR. ADAMS: The District has no further
5 questions.

6 CHAIRPERSON ANDERSON: All right, thank you.
7 Thank you for your testimony. How many more
8 witnesses does the government have?

9 MS. DANIELS: This is our only witness, Mr.
10 Chairman.

11 CHAIRPERSON ANDERSON: For both cases, this
12 is it?

13 MS. DANIELS: Yes.

14 CHAIRPERSON ANDERSON: So, does the
15 government rest?

16 MS. DANIELS: Yes.

17 CHAIRPERSON ANDERSON: All right. How many
18 witnesses do you have, sir?

19 MR. KLAPROTH: Investigator Cullings but I'm
20 not sure if she's here.

21 CHAIRPERSON ANDERSON: We're going to take a
22 break, so I'm saying if you're calling

1 Investigator Cullings and who else?

2 MR. KLAPROTH: That's it.

3 CHAIRPERSON ANDERSON: So, we're going to be
4 in recess and we will reconvene at 1:30.

5 MR. KLAPROTH: Thank you, Mr. Chairman.

6 CHAIRPERSON ANDERSON: We're back on the
7 record for the continuation of case #16-CMP-
8 00503, The Alibi, license #97969. The second
9 case #16-CMP-00600 is The Alibi license #97969.
10 The government has rested so the licensee will
11 now present its case.

12 MR. KLAPROTH: The Alibi wishes to all
13 Investigator Cullings.

14 CHAIRPERSON ANDERSON: Can you raise your
15 right hand, please? Do you swear or affirm to
16 tell the truth and nothing but the truth?

17 INVESTIGATOR CULLINGS: Yes.

18 CHAIRPERSON ANDERSON: Have a seat. Your
19 witness, sir.

20 MR. KLAPROTH: Good afternoon, ma'am. Can
21 you please state your name for the record?

22 INVESTIGATOR CULLINGS: Yes, Tasha Nicole

1 Cullings. C-U-L-L-I-N-G-S.

2 MR. KLAPROTH: Ms. Cullings, who are you
3 employed by?

4 INVESTIGATOR CULLINGS: The Alcoholic
5 Beverage Regulation Administration.

6 MR. KLAPROTH: And how long have you been
7 employed with ABRA?

8 INVESTIGATOR CULLINGS: Since July of 2015.

9 MR. KLAPROTH: And where were you employed
10 before?

11 INVESTIGATOR CULLINGS: Previously I was a
12 police officer for the transit system in Atlanta
13 and also a police officer with the Fulton County
14 School System in Atlanta, Georgia.

15 MR. KLAPROTH: And how long collectively were
16 you a police officer in Atlanta in Fulton.

17 INVESTIGATOR CULLINGS: Nine years.

18 MR. KLAPROTH: In your position as officer?

19 INVESTIGATOR CULLINGS: Yes, police officer.

20 MR. KLAPROTH: What is your position with
21 ABRA?

22 INVESTIGATOR CULLINGS: I've switched

1 positions since this case, so currently I'm a
2 licensing specialist.

3 MR. KLAPROTH: What were you prior to that?

4 INVESTIGATOR CULLINGS: An investigator.

5 MR. KLAPROTH: And when did you become a
6 licensing specialist?

7 INVESTIGATOR CULLINGS: In January 2017. I
8 can't remember the exact date.

9 MR. KLAPROTH: Is it accurate to say that you
10 were an investigator with ABRA from July 2015 to
11 approximately early 2017?

12 INVESTIGATOR CULLINGS: Yes, that's correct.

13 MR. KLAPROTH: And what were your
14 responsibilities as an investigator?

15 INVESTIGATOR CULLINGS: As an investigator I
16 conducted inspections and investigations of
17 licensed ABC establishments in the District of
18 Columbia.

19 MR. KLAPROTH: Were you trained to perform
20 those investigations?

21 INVESTIGATOR CULLINGS: Yes, I was.

22 MR. KLAPROTH: What did that training entail?

1 INVESTIGATOR CULLINGS: I worked with three
2 different training officers that were senior
3 investigators here at ABRA. We went out and did
4 field work together for a total of six weeks.
5 So, I was with three different training
6 investigators for a period of two weeks each.

7 MR. KLAPROTH: Who were those training
8 investigators?

9 INVESTIGATOR CULLINGS: One was Investigator
10 Mark Brashears. The other was Investigator
11 Felicia Dantzler. And the other is a former
12 investigator, Abie Ghenene.

13 MR. KLAPROTH: What were some of the things
14 that you learned in performing investigations for
15 ABRA?

16 INVESTIGATOR CULLINGS: We went out and did
17 inspections of licensed ABC establishments. On
18 the weekends we would have monitoring lists that
19 we would get for different establishments based
20 sometimes off of complaints or past issues that
21 they'd had or establishments that were in a
22 protest process. We would get lists of places

1 that we would go out and do monitoring.

2 MR. KLAPROTH: And when you received the
3 monitoring assignment, did your investigation
4 differ if it was pursuant to a complaint or just,
5 I think you said, based on past occurrences. Did
6 it differ or was it the same?

7 INVESTIGATOR CULLINGS: No, the same. The
8 same investigation.

9 MR. KLAPROTH: Is there any requirements or
10 policies in how an investigation is to be done
11 pursuant to a monitoring assignment?

12 INVESTIGATOR CULLINGS: Well it depends on
13 the type of -- I'd say the type of allegations
14 that have been given to us by -- or the
15 violations I should say, the violations that we
16 are told of certain establishments. Sometimes we
17 will do it in an undercover capacity. Sometimes
18 we will go in, show our badges, identify
19 ourselves at the door and do different types of
20 monitoring. Sometimes we'll monitor from inside
21 the establishment, sometimes we will stay
22 outside. Like I said, in undercover capacity

1 depends on the type of violation or the
2 situation.

3 MR. KLAPROTH: Who makes the determination
4 whether it should be undercover or not?

5 INVESTIGATOR CULLINGS: Well, a collaborative
6 with the supervisory investigator and I guess
7 basically depending on what the violation is.

8 MR. KLAPROTH: And during your monitoring
9 activities is it fair to call it an
10 investigation? The monitoring activities?

11 INVESTIGATOR CULLINGS: Well, most times they
12 are monitoring activities are based on an
13 investigation that we're currently working on or
14 it may turn into some further investigating at a
15 later time may come out of the monitoring that we
16 do.

17 MR. KLAPROTH: So, is there a formal
18 investigation that needs to be approved at some
19 point based on monitoring activities? Like an
20 investigation number or anything like that?

21 INVESTIGATOR CULLINGS: No. Well, upon the
22 completion of an investigation we write an

1 investigative report which is reviewed by the
2 supervisor.

3 MR. KLAPROTH: And when is that to be
4 completed?

5 INVESTIGATOR CULLINGS: We have to turn those
6 in within 30 days of the incident?

7 MR. KLAPROTH: And is there any policies or
8 training you received with respect to gathering
9 evidence during monitoring activities or an
10 investigator?

11 INVESTIGATOR CULLINGS: Well, I had had
12 previous experience as a police officer and when
13 I went out with my training officers I don't
14 remember anything in particular that we do other
15 than getting the who, what, when, where and whys
16 of what happens and being able to articulate that
17 into a report.

18 MR. KLAPROTH: Is there any method you use to
19 get those "who, what, whens and whys"?

20 INVESTIGATOR CULLINGS: None in particular.

21 MR. KLAPROTH: Such as interviewing
22 witnesses, taking photographs of evidence or

1 anything like that?

2 INVESTIGATOR CULLINGS: Yes, depending on the
3 situation, we'll go in. Like I said, if we're
4 working in an undercover capacity then we don't
5 identify ourselves, we kind of blend in with the
6 crowd. We will take photographs if necessary and
7 if possible from our issued cell phones. If
8 there are witnesses that are involved that we
9 have knowledge of then we will identify ourselves
10 to those people and ask questions of the
11 witnesses of the license owners. It just depends
12 on the type of report you're doing or the type of
13 investigation that you're doing.

14 MR. KLAPROTH: And how about witness
15 statements? Is that part of memorializing
16 witness statements into a report? Is that part
17 of the policy or practice?

18 INVESTIGATOR CULLINGS: Yeah, if we have -- I
19 mean, if there are witnesses that we make contact
20 with, if it's done via telephone then, of course,
21 I will state that in my -- I would state that in
22 my report. If it's done via e-mail I normally

1 would include that as an exhibit. If I have them
2 write a written statement, then I would include
3 that as well as the exhibit.

4 MR. KLAPROTH: In the exhibit to?

5 INVESTIGATOR CULLINGS: My investigative
6 report.

7 MR. KLAPROTH: Okay, thank you. Now, while
8 engaged in monitoring activities for an
9 investigation, if you find a violation what do
10 you do? Is there any sort of policies or
11 practices you're required to do?

12 INVESTIGATOR CULLINGS: Again, depending on
13 the situation, if I'm in an undercover capacity
14 then I normally would document things that I've
15 seen, I would take pictures, and then sometimes I
16 will go back at a later date or have other --
17 advise my supervisor and they would have other
18 investigators go back on different dates and the
19 establishment would be monitored. If I'm not in
20 an undercover capacity, I would identify myself
21 to the owner and/or ABC manager on duty and
22 advise them of the violations that I witnessed

1 while I was at the establishment.

2 MR. KLAPROTH: And you would issue a
3 citation, right?

4 INVESTIGATOR CULLINGS: I did not personally
5 issue citations on the spot because if I did not
6 have the investigative history of the
7 establishment with me, and in some cases I
8 wouldn't have that with me when I went into the
9 establishment and I would need that to know what
10 type of citation or what the fine amount was, so
11 I would normally document it that it was a
12 violation, make them aware of it, come back, pull
13 the history, consult with my supervisor to
14 determine the appropriate fine or if it's a
15 warning citation or a monetary fine.

16 MR. KLAPROTH: And then once you made that
17 determination then you would issue a citation.

18 INVESTIGATOR CULLINGS: Once -- right, once
19 I've come back and looked through their
20 investigative history, then go out. If it was
21 something that was a fine was issued for,
22 sometimes things would have to go before the

1 board first before we could just issue a fine.

2 Depends on the violation.

3 MR. KLAPROTH: And would the citation be
4 issued before or after the investigative report
5 was completed?

6 INVESTIGATOR CULLINGS: It depends on the
7 type of incident that it is. Normally, the
8 citation is written while I'm in the process --
9 if it's a monetary fine the citation is written
10 while I'm in the process of the 30 days of
11 completing my report so that I can include that
12 as an exhibit.

13 MR. KLAPROTH: Is that standard practice for
14 you to include that as an exhibit if it occurs
15 within that 30 day period?

16 INVESTIGATOR CULLINGS: Yes.

17 MR. KLAPROTH: All right, so I'd like to
18 direct your attention to June 10, 2016. Have you
19 been involved in any investigations of the
20 restaurant and bar called The Alibi?

21 INVESTIGATOR CULLINGS: Just the night I went
22 in an undercover capacity in reference to Mr., I

1 believe it was Scahill, supposed to -- someone
2 alleged that he was seen at the establishment and
3 I went in an undercover capacity working with
4 Investigator Brashears.

5 MR. KLAPROTH: And you said someone alleged
6 that Mr. Scahill had been present? Where did you
7 learn that information from?

8 INVESTIGATOR CULLINGS: From -- I don't know
9 how Investigator Brashears received that
10 information, but that was the purpose of us going
11 that night and going in an undercover capacity
12 because it was told to someone here at ABRA that
13 he had been seen at the establishment.

14 MR. KLAPROTH: And you, just to clarify, you
15 learned that through Mr. Brashears?

16 INVESTIGATOR CULLINGS: Yes, on that night.

17 MR. KLAPROTH: Were you -- you testified
18 earlier about monitoring assignments, right?

19 INVESTIGATOR CULLINGS: Yes.

20 MR. KLAPROTH: Was that -- were you assigned
21 to investigate that that night? The Alibi?

22 INVESTIGATOR CULLINGS: I don't remember if I

1 was assigned that or not. I don't recall.

2 MR. KLAPROTH: Did you speak with anyone at
3 ABRA about the investigation or the allegations -
4 - the monitoring, we'll say -- that was to occur
5 other than Mr. Brashears?

6 INVESTIGATOR CULLINGS: No.

7 MR. KLAPROTH: Did Mr. Brashears request you
8 to join him as part of the investigation?

9 INVESTIGATOR CULLINGS: I believe he asked
10 the supervisory investigator, Stewart, if I could
11 go in an undercover capacity because Mr. Scahill
12 did not know who I was and I didn't know who he
13 was and because we were going to go that night
14 or, I guess, Mr. Brashears was going to go that
15 night to see if he located or spotted Mr.
16 Scahill. I remember him asking our supervisory
17 investigator if I could go in an undercover
18 capacity.

19 MR. KLAPROTH: And that was approved?

20 INVESTIGATOR CULLINGS: Yes.

21 MR. KLAPROTH: So, after that then you went
22 to The Alibi, correct?

1 INVESTIGATOR CULLINGS: Well, prior to that,
2 Investigator Brashears gave me a picture of Mr.
3 Scahill. It was a passport picture. And gave me
4 the address. I was not familiar with The Alibi.
5 Gave me the address and gave me a passport
6 photocopy passport picture of Mr. Scahill.

7 MR. KLAPROTH: And is that the only photo he
8 gave you?

9 INVESTIGATOR CULLINGS: That I recall, yes.
10 I don't remember if it was any other pictures. I
11 remember a passport picture specifically.

12 MR. KLAPROTH: Do you still have a copy of
13 that passport picture?

14 INVESTIGATOR CULLINGS: I do not.

15 MR. KLAPROTH: Did you -- you said that Mr.
16 Brashears gave you the address. Is it fair to
17 say you drove to The Alibi by yourself?

18 INVESTIGATOR CULLINGS: I did.

19 MR. KLAPROTH: Do you know what time you
20 arrived?

21 INVESTIGATOR CULLINGS: We were on night
22 shift and when we left out of here, I want to say

1 between 8:30 and 9:30 maybe.

2 MR. KLAPROTH: And do you recall the day that
3 this investigation occurred?

4 INVESTIGATOR CULLINGS: I believe it was a
5 Friday night because we were working nights that
6 particular evening.

7 MR. KLAPROTH: Do you know the actual
8 calendar date?

9 INVESTIGATOR CULLINGS: I don't recall.

10 MR. KLAPROTH: Would it refresh your
11 recollection to look at the case report?

12 INVESTIGATOR CULLINGS: Sure.

13 MR. KLAPROTH: I believe in front of you, you
14 may have exhibit #2.

15 INVESTIGATOR CULLINGS: Yes.

16 MR. KLAPROTH: Does that refresh your
17 recollection of the date in question?

18 INVESTIGATOR CULLINGS: Yes, Friday June
19 10th.

20 MR. KLAPROTH: So, what did you do when you
21 arrived at The Alibi?

22 INVESTIGATOR CULLINGS: When I arrived at The

1 Alibi, parked down the street. I walked in and
2 went to the bar area, sat at the bar, asked for a
3 menu. I ordered a Coca Cola, paid the bartender
4 for the Coca Cola. I kind of looked around. I
5 let the bartenders know that I was waiting on a
6 friend so I wouldn't stick out and look odd just
7 sitting there kind of looking around. I looked
8 around to see if I saw a gentleman that looked
9 like a picture -- the passport picture that I
10 had. The gentleman behind the bar, I wasn't sure
11 if that was him or not. I didn't go in my purse
12 to pull the passport picture out because I didn't
13 know who was around me and who may have been
14 watching me. After I finished drinking the Coca
15 Cola I received a message on my phone from
16 Investigator Brashears. At that time I walked
17 outside and looked around. I saw Investigator
18 Brashears standing a few -- I guess he was
19 outside of the next establishment, or the one
20 next door to it, I can't remember. And I went
21 over and met up with him.

22 MR. KLAPROTH: What was the message that he

1 sent you?

2 INVESTIGATOR CULLINGS: I don't recall. I
3 think he -- I don't know if he texted me or if he
4 called -- made a phone call to me -- but I didn't
5 answer. The phone was sitting on the bar and I
6 didn't get the message or see that he'd called
7 until I came outside.

8 MR. KLAPROTH: So, there's no communication
9 other than, you know, a missed phone call --

10 INVESTIGATOR CULLINGS: Yes.

11 MR. KLAPROTH: -- or text message you didn't
12 look at --

13 INVESTIGATOR CULLINGS: Yes.

14 MR. KLAPROTH: -- correct?

15 INVESTIGATOR CULLINGS: Yes.

16 MR. KLAPROTH: So, you didn't know if he was
17 outside or not.

18 INVESTIGATOR CULLINGS: No, I did not.

19 MR. KLAPROTH: Before you went in to The
20 Alibi did you speak with Mr. Brashears at the
21 location to form a game plan, so to speak?

22 INVESTIGATOR CULLINGS: No, I did not.

1 MR. KLAPROTH: So, he didn't instruct you to
2 go inside The Alibi?

3 INVESTIGATOR CULLINGS: We talked about it
4 before I left here -- before I left the office --

5 MR. KLAPROTH: Mm hmm.

6 INVESTIGATOR CULLINGS: -- that I was going
7 to go there and go in an undercover capacity.

8 MR. KLAPROTH: Okay, just to be clear, he
9 didn't instruct you to do that at the actual
10 Alibi itself?

11 INVESTIGATOR CULLINGS: No. And you
12 testified that you believed -- you weren't sure
13 if the bartender was Mr. Scahill or not, is that
14 correct?

15 INVESTIGATOR CULLINGS: Yes.

16 MR. KLAPROTH: Did you do anything, any
17 follow-up, ask any questions to root out that
18 lead for lack of a better term?

19 INVESTIGATOR CULLINGS: No, I did not.

20 MR. KLAPROTH: So, you did not see Mr.
21 Scahill other than perhaps the bartender in The
22 Alibi, correct?

1 INVESTIGATOR CULLINGS: Correct, I did not
2 see him inside The Alibi.

3 MR. KLAPROTH: Unless it was the bartender?

4 INVESTIGATOR CULLINGS: Exactly.

5 MR. KLAPROTH: How long were you in The Alibi
6 for?

7 INVESTIGATOR CULLINGS: I'd say about ten
8 minutes.

9 MR. KLAPROTH: Did you speak with anybody
10 other than, I believe you told the bartender you
11 were waiting on friends?

12 INVESTIGATOR CULLINGS: Yes, I didn't speak
13 to anyone else.

14 MR. KLAPROTH: Did you take any photos while
15 you were inside?

16 INVESTIGATOR CULLINGS: No.

17 MR. KLAPROTH: After you got this missed call
18 or text message that you didn't look at, how long
19 after that did you go outside?

20 INVESTIGATOR CULLINGS: Well, I sat in there
21 long enough to finish the Coca Cola and after I
22 felt that I was maybe sticking out like a sore

1 thumb and I wasn't sure if the gentleman behind
2 the bar was Mr. Scahill, I went outside and at
3 that time I planned to call Investigator
4 Brashears to tell him about the guy behind the
5 bar, and when I walked outside and looked around
6 I happened to see Investigator Brashears standing
7 outside, so I walked over to him.

8 MR. KLAPROTH: How far away was he from the
9 entrance to The Alibi?

10 INVESTIGATOR CULLINGS: He was a good little
11 ways away from the entrance. Because the next --

12 MR. KLAPROTH: Do you have a reasonable
13 estimate?

14 INVESTIGATOR CULLINGS: I'd say 30-40 feet.
15 I want to say he was near the other establishment
16 that was next door, either that one or the one
17 next to it. He was closer to one of those
18 establishments.

19 MR. KLAPROTH: And what was he doing when you
20 saw him?

21 INVESTIGATOR CULLINGS: He was just standing
22 there.

1 MR. KLAPROTH: Did he have his phone in his
2 hand?

3 INVESTIGATOR CULLINGS: I don't remember.

4 MR. KLAPROTH: What, if anything, happened
5 after you approached Mr. Brashears?

6 INVESTIGATOR CULLINGS: I told him that I
7 wasn't sure if Mr. Scahill was in there and that
8 there was a gentleman behind the bar that looked
9 like the passport picture and while we were
10 standing there talking he looked over in the
11 direction of The Alibi where the sidewalk café
12 was and said that 'that's him right there' and it
13 was a table -- it was a gentleman and a female
14 sitting at the table.

15 MR. KLAPROTH: And at this point you're
16 approximately 30 to 40 feet away?

17 INVESTIGATOR CULLINGS: Yes.

18 MR. KLAPROTH: Did either of you approach the
19 individuals at the table?

20 INVESTIGATOR CULLINGS: No.

21 MR. KLAPROTH: Did you approach to get a
22 closer look at all or did you just stay where you

1 were standing?

2 INVESTIGATOR CULLINGS: No, I just stood
3 there with him.

4 MR. KLAPROTH: Can you describe the lighting
5 at that point?

6 INVESTIGATOR CULLINGS: I don't remember. I
7 know it was dark outside and I'm sure it was
8 street lights or at least one street light. I
9 don't recall. The way the sidewalk café is set
10 up, if I remember correctly, it's just right on
11 the sidewalk so I don't remember outdoor lighting
12 for the establishment other than street lighting
13 maybe.

14 MR. KLAPROTH: And was there any obstructions
15 blocking your view?

16 INVESTIGATOR CULLINGS: No.

17 MR. KLAPROTH: And were you able to confirm
18 personally, you, that it was indeed Mr. Scahill?

19 INVESTIGATOR CULLINGS: No, I was not.

20 MR. KLAPROTH: What did you do after that?

21 INVESTIGATOR CULLINGS: When he said that
22 there he was, I mentioned again that the guy

1 inside looked like him and then I said most
2 people don't look like their passport so I wasn't
3 sure, you know, who he may have been. I don't
4 remember if we talked a few more moments. I
5 think Investigator Brashears said he was going to
6 hang out there and I walked away to my car and
7 got in my car and left.

8 MR. KLAPROTH: So, did you do that
9 immediately? Go to your car to leave after the
10 comment from Mr. Brashears about Mr. Scahill?

11 INVESTIGATOR CULLINGS: Shortly after, yes.

12 MR. KLAPROTH: So, is it fair to say -- and
13 then where did you go after that?

14 INVESTIGATOR CULLINGS: I had my own
15 monitoring list of places to do and also sheets
16 of regulatory inspections of licensed
17 establishments that we go to, so I left to
18 continue my duties for the evening.

19 MR. KLAPROTH: Okay, and just to be clear,
20 you didn't go back into The Alibi at any point,
21 correct?

22 INVESTIGATOR CULLINGS: No, I did not.

1 MR. KLAPROTH: And you didn't circle the
2 block to continue monitoring activities?

3 INVESTIGATOR CULLINGS: No.

4 MR. KLAPROTH: So, when you left The Alibi
5 it's fair to say that you were not able to
6 affirmatively identify Mr. Scahill as being
7 present in The Alibi, correct?

8 INVESTIGATOR CULLINGS: Correct, I could not.

9 MR. KLAPROTH: Did you have any subsequent
10 conversations with Mr. Brashears about the
11 investigation of The Alibi?

12 INVESTIGATOR CULLINGS: No.

13 MR. KLAPROTH: Did Mr. Brashears state
14 anything other than that he was going to stick
15 around The Alibi?

16 INVESTIGATOR CULLINGS: No.

17 MR. KLAPROTH: Did he indicate what his plan
18 to investigate further was, if any?

19 INVESTIGATOR CULLINGS: No.

20 MR. KLAPROTH: Have you investigated --
21 conducted any additional monitoring activities at
22 The Alibi personally?

1 INVESTIGATOR CULLINGS: I have not, no.

2 MR. KLAPROTH: Do you recall, if you can,
3 exactly what Investigator Brashears said when he
4 believed that he saw Mr. Scahill?

5 INVESTIGATOR CULLINGS: I believe he pointed
6 -- well, I know he pointed to a table on the
7 sidewalk café and said, 'there he is, there' and
8 I looked over. I remember seeing a gentleman and
9 a female but I don't remember what the person
10 looked like and I can't recall or remember if it
11 was the person from the photo. That was my first
12 time ever seeing that picture or ever seeing Mr.
13 Scahill was that night and that was the picture
14 that I was given, the passport picture.

15 MR. KLAPROTH: And based on the passport
16 picture, it didn't appear to be that individual
17 to you?

18 INVESTIGATOR CULLINGS: I don't remember -- I
19 mean I don't know one way or another. He said --
20 he pointed to the table and said, 'there he is,'
21 I looked over. At that point I don't remember
22 paying any more attention because the reason we

1 were there was to see if Mr. Scahill was there
2 and when he looked over and said that he was
3 there, then my monitoring was done, my undercover
4 monitoring was finished, or completed.

5 MR. KLAPROTH: Do you know if Investigator
6 Brashears took any photos?

7 INVESTIGATOR CULLINGS: I don't remember.

8 MR. KLAPROTH: Did you suggest to him to take
9 photos?

10 INVESTIGATOR CULLINGS: I did not.

11 MR. KLAPROTH: Do you recall -- you said it
12 was a man and female sitting at the table on the
13 sidewalk café? Can you --

14 MS. DANIELS: Objection. Asked and answered.

15 CHAIRPERSON ANDERSON: Well, he hasn't
16 finished asking the question yet.

17 MR. KLAPROTH: So, you testified that there's
18 a male and female sitting at the table. Can you
19 describe what the female looked like?

20 INVESTIGATOR CULLINGS: I cannot. It was in
21 June. I don't remember.

22 MR. KLAPROTH: Any recollection of skin

1 color?

2 INVESTIGATOR CULLINGS: No.

3 MR. KLAPROTH: Hair color?

4 INVESTIGATOR CULLINGS: No.

5 MR. KLAPROTH: And how about the male? Any
6 recollection of skin color?

7 INVESTIGATOR CULLINGS: No.

8 MR. KLAPROTH: Hair color?

9 INVESTIGATOR CULLINGS: No.

10 MR. KLAPROTH: The board's indulgence for
11 just a brief moment? Investigator Cullings, have
12 you engaged in previous investigations with
13 Investigator Brashears?

14 INVESTIGATOR CULLINGS: Yes.

15 MS. DANIELS: Objection, relevance.

16 MR. KLAPROTH: It goes to the witness's
17 credibility -- Mr. Brashear's credibility.

18 CHAIRPERSON ANDERSON: I'm going to overrule
19 the objection. It means that you can answer the
20 question if you haven't answered it.

21 INVESTIGATOR CULLINGS: Yes, I believe I
22 have.

1 MR. KLAPROTH: Did you participate in any
2 investigation with Mr. Brashears at an
3 establishment called Madam's Organ?

4 INVESTIGATOR CULLINGS: No.

5 MR. KLAPROTH: Based on your prior
6 experiences conducting investigations with Mr.
7 Brashear's do you have any reason to question his
8 credibility?

9 INVESTIGATOR CULLINGS: No.

10 MR. KLAPROTH: Nothing further.

11 CHAIRPERSON ANDERSON: Ms. Daniels? Your
12 witness.

13 MS. DANIELS: Thank you, Mr. Chairman.
14 Investigator Cullings, you testified that on June
15 10, 2016, you accompanied Mr. Brashears to The
16 Alibi, correct?

17 INVESTIGATOR CULLINGS: Yes.

18 MS. DANIELS: And is it fair to classify
19 investigator Brashears as the lead investigator
20 on that case?

21 INVESTIGATOR CULLINGS: Yes.

22 MS. DANIELS: And is it fair to classify you

1 as a secondary investigator in that case?

2 INVESTIGATOR CULLINGS: Yes.

3 MS. DANIELS: And what exactly was your role
4 in accompanying Investigator Brashears?

5 INVESTIGATOR CULLINGS: My role was going in
6 in an undercover capacity to see if I located or
7 observed Mr. Scahill at the establishment.

8 MS. DANIELS: And you testified that when you
9 exited the establishment after spending some time
10 in there and met Investigator Brashears outside
11 that Investigator Brashears pointed out to you
12 two individuals sitting in the sidewalk café, is
13 that correct?

14 INVESTIGATOR CULLINGS: Correct.

15 MS. DANIELS: And he identified the male to
16 be Martin Scahill, is that correct?

17 INVESTIGATOR CULLINGS: Correct.

18 MS. DANIELS: Investigator Cullings, are you
19 aware that an investigative report was written in
20 this matter?

21 INVESTIGATOR CULLINGS: I am now, yes.

22 MS. DANIELS: Are you aware that Investigator

1 Brashears wrote that report?

2 INVESTIGATOR CULLINGS: Yes.

3 MS. DANIELS: You didn't write any portion of
4 that report, is that correct?

5 INVESTIGATOR CULLINGS: Correct.

6 MS. DANIELS: And is it fair to say that you
7 didn't write any portion of that report because
8 you were the secondary investigator in this
9 matter?

10 INVESTIGATOR CULLINGS: Yes.

11 MS. DANIELS: I have no further questions,
12 Mr. Chairman.

13 CHAIRPERSON ANDERSON: Thank you, any
14 questions by any board members? Mr. Short?

15 MR. SHORT: Good afternoon, Investigator
16 Cullings.

17 INVESTIGATOR CULLINGS: Good afternoon.

18 MR. SHORT: Your testimony as I heard it is
19 that you did work undercover and that you did go
20 with another investigator, Mr. Brashears, and
21 that you did see the target of your investigation
22 while you were there? Is that correct?

1 MR. KLAPROTH: Objection. Mischaracterizing
2 evidence. Ms. Culling testified --

3 CHAIRPERSON ANDERSON: Rephrase the question,
4 Mr. Short.

5 MR. SHORT: Okay. While working undercover
6 with Investigator Brashears, did you see Mr.
7 Scahill at the location you were at?

8 INVESTIGATOR CULLINGS: I'm not sure the
9 gentleman that was pointed out to me by
10 Investigator Brashears if that was Mr. Scahill.
11 I couldn't identify if that was him or not based
12 on the picture that I had, the passport picture.
13 It was my first time ever seeing him was the
14 passport picture that I was given to go in and
15 try to identify him.

16 MR. SHORT: Did investigator Brashears say
17 that was the person he was there to see?

18 INVESTIGATOR CULLINGS: Yes, he did.

19 MR. SHORT: Thank you, that's all. Thank you
20 very much for your testimony. That's all I have,
21 Mr. Chairman.

22 CHAIRPERSON ANDERSON: All right.

1 MR. ALBERTI: I have a real quick question.

2 CHAIRPERSON ANDERSON: Mr. Alberti?

3 MR. ALBERTI: I just want to make it clear as
4 to what your testimony is, investigator Cullings.
5 Based on your observations that night and based
6 on the picture that you had, do you have any
7 reason -- do you have any reasonable basis to
8 doubt Mr. -- Investigator Brashear's
9 identification of the individual?

10 INVESTIGATOR CULLINGS: I do not.

11 MR. ALBERTI: Thank you.

12 CHAIRPERSON ANDERSON: Are there any other
13 questions by any other board members? Ms.
14 Daniels?

15 MS. DANIELS: No.

16 CHAIRPERSON ANDERSON: You go last, so I'll
17 ask Ms. Daniels based on the questions.

18 MS. DANIELS: No, Mr. Chairman. I have no
19 further questions.

20 CHAIRPERSON ANDERSON: Any final questions,
21 sir?

22 MR. KLAPROTH: No follow-ups, thank you, Mr.

1 Chairman.

2 CHAIRPERSON ANDERSON: Thank you, Ms.
3 Cullings, for your testimony. You can step down,
4 please. Do not discuss this case with -- the
5 nature of your testimony with anyone until the
6 case is over. Do you have any other witnesses?

7 MR. KLAPROTH: No, Mr. Chairman.

8 CHAIRPERSON ANDERSON: Do you rest?

9 MR. KLAPROTH: Yes.

10 CHAIRPERSON ANDERSON: Does the government
11 wish to make closing argument?

12 MS. DANIELS: Yes, Mr. Chairman.

13 CHAIRPERSON ANDERSON: Go ahead.

14 MS. DANIELS: Mr. Chairman and members of the
15 board this establishment exhibits zero regard
16 toward the board's authority and the license
17 conditions that were placed on them by this
18 board. Not only does this establishment -- not
19 only has this establishment taken this board's
20 authority lightly, it also failed to abide by its
21 own promises that it presented to this board to
22 receive its license in the first place. This

1 board --

2 MR. KLAPROTH: Objection,
3 mischaracterization.

4 CHAIRPERSON ANDERSON: It's closing, sir. I
5 mean, we try not to object to -- we try not to
6 interrupt closing but if she says something that
7 you disagree with, in your closing I would prefer
8 that you bring that up.

9 MR. KLAPROTH: Understood, Mr. Chairman.

10 CHAIRPERSON ANDERSON: Thank you.

11 MS. DANIELS: This board has granted the
12 authority under D.C. § 25-104 to issue licenses
13 and under (e) of that same statutory provision
14 this board can impose conditions on a license to
15 protect the interests of the surrounding
16 neighborhood. License conditions ordered and
17 issued by this board require mandatory
18 compliance. They are not suggestions or
19 recommendations. They are mandatory and this
20 board issued an order on May 18, 2016, placing
21 conditions in this establishment's license.
22 Those conditions that are relevant to these two

1 matters before you today are that the license
2 holder of this establishment shall execute and
3 maintain a barring notice against Martin Scahill
4 to prohibit from entering or accessing the
5 licensed premises for a period of five years.

6 Another condition relevant to this hearing is
7 that the license holder, their managers or agents
8 shall notify MPD anytime the owners or their
9 agents' witnesses have reason to believe that a
10 violation of this barring notice has been
11 committed. Another condition on this license
12 that is relevant to this hearing is that the
13 license holder shall not intentionally permit or
14 allow Martin Scahill to remain on the premises.
15 Lastly, this license holder shall not employ
16 Martin Scahill as a manager, employee,
17 independent contractor or volunteer.

18 Through the testimony of Investigator Mark
19 Brashears today, you learned that on two separate
20 occasions, June 10, 2016, and July 8, 2016, that
21 this establishment, through its owner, blatantly
22 violated the conditions placed on its license

1 through the board's order on May 18, 2016, and
2 these violations occurred less than two months
3 after that board order was issued. First, on
4 June 10, 2016, you learned through Mr. Brashears
5 that this establishment violated the conditions
6 of its order by not only having Martin Scahill
7 present at the establishment but also
8 volunteering by carrying dishes to the service
9 area, an area that is designated for employees of
10 the establishment. Not only was Martin Scahill
11 present, he was sitting eating and engaging with
12 the current establishment's owner, Rachel
13 Traverso, outside and in public. These actions
14 can infer that the owner and the establishment
15 willfully and consciously violated the board's
16 order. It was only after Investigator Brashears
17 notified Ms. Traverso of his presence that she
18 asked Mr. Scahill to leave. But for Investigator
19 Brashears visiting the establishment and
20 identifying himself as an ABRA investigator, Mr.
21 Scahill would have still been present for a lot
22 longer of a time in continuing violation of this

1 board's order.

2 Since Mr. Scahill was present within the
3 establishment within the five year barred period
4 of the order, and volunteering by carrying dishes
5 to the service area, this establishment was in
6 violation of its order and the government asks
7 you to find this establishment in violation of
8 D.C. § 25-823(c).

9 Second, on July 8, 2016, you learned through
10 the testimony of Investigator Brashears that
11 after receiving another complaint regarding Mr.
12 Scahill at the establishment he visited this
13 establishment and once again Investigator
14 Brashears observed Mr. Scahill through the
15 establishment window. Not only did he visually
16 identify Mr. Scahill through the window, an
17 employee of that establishment verbally confirmed
18 the presence of Mr. Scahill in that
19 establishment.

20 Once again, when Mr. Scahill identified
21 himself to this establishment's owner, she
22 willfully violated the conditions on this

1 establishment's license by denying Mr. Scahill's
2 presence after his presence had been confirmed by
3 an independent individual who actually worked for
4 that establishment.

5 MR. KLAPROTH: Objection, let's not --
6 there's no testimony to that, so --

7 CHAIRPERSON ANDERSON: Mr. --

8 MR. KLAPROTH: I understand it just wasn't
9 given in evidence.

10 CHAIRPERSON ANDERSON: I do hear and for the
11 most part -- we don't make our decision on an
12 attorney's closing arguments so, but please sir,
13 do not interrupt. You can correct the record
14 when you do your closing, okay?

15 MS. DANIELS: Investigator Brashears
16 testified in this hearing that the female
17 employee, after she opened the door for
18 Investigator Brashears, after Investigator
19 Brashears asked her 'where is Martin?' she said
20 to him, as he testified, that 'oh, he's by the
21 bar with Rachel.' He testified to this at this
22 hearing and that is why I made that argument

1 today.

2 In the cross of Investigator Brashear's
3 counsel emphasized that no photographs were taken
4 in either incident by Investigator Brashears.
5 The government argues that this is irrelevant to
6 this matter because Investigator Brashear's not
7 only visually identified Mr. Scahill on the
8 premises of this establishment on the two
9 separate occasions, but also this fact was
10 independently verified by Ms. Traverso herself in
11 the first instance on June 10, 2016, and by the
12 female employee on July 8, 2016.

13 Ms. Traverso, the owner, is clearly the
14 enabler for this establishment's complete
15 disregard for this board's authority. An owner
16 cannot pick and choose when it desires to follow
17 a board order or the license conditions imposed
18 by this board. Moreover, this establishment has
19 violated its order in separate and different
20 conditions such as allowing Mr. Scahill to be
21 present at the property, volunteering at the
22 property, and not calling the Metropolitan Police

1 Department to notify such violations of this
2 order. Thus, the government requests that this
3 board find this establishment in violation of
4 D.C. § 25-823(c) for the two instances on June
5 10, 2016 and July 8, 2016.

6 CHAIRPERSON ANDERSON: What is the fine range
7 you are asking us to do if we find them guilty?

8 MS. DANIELS: Mr. Chairman, may I reserve
9 that for rebuttal?

10 CHAIRPERSON ANDERSON: Okay, sure. Go ahead,
11 sir. I just want to know what is it that -- in
12 your closing, I want you to tell me what you want
13 the board to do.

14 MR. KLAPROTH: Dismiss all charges.

15 CHAIRPERSON ANDERSON: I would not have
16 expected anything otherwise, sir. Okay. Go
17 ahead.

18 MR. KLAPROTH: That's clear. The government
19 has identified four bases that -- why they
20 believe The Alibi is in violation of the
21 conditions placed on the license. The first
22 noted was that The Alibi failed to maintain a bar

1 notice. Mr. Brashears, the only witness called
2 by the government, testified that at all times he
3 had no reason to believe that the barring notice
4 was not in effect, so, therefore, the government
5 has failed to prove that violation.

6 Second, the government stated that one of the
7 violations was that The Alibi failed to call MPD
8 when having reasonable believe -- which is what
9 the order says -- that Mr. Scahill's present at
10 The Alibi. Mr. Brashears testified, however,
11 quite the contrary. Mr. Brashears stated that
12 The Alibi had, in fact, called MPD. He took
13 issue with the fact that it wasn't 911, but
14 that's not what the order says. The order says
15 MPD. That's not in dispute.

16 The third thing the government identified as
17 a basis to support their charge is that through
18 the condition that the license holder shall not
19 intentionally permit or allow Martin Scahill to
20 remain on the premises. Again, Investigator
21 Brashears testified he had absolutely no evidence
22 to show any intent whatsoever on behalf of The

1 Alibi. This is an element of what needs to be
2 proved by the government and the evidence shows
3 quite the contrary, that there was no intent.

4 Last, the government identified, I believe if
5 I'm not mistaken, that The Alibi violated the
6 terms of the license because Mr. Scahill was
7 volunteering. The only evidence to support that
8 is carrying dishes. Quite -- the order clearly
9 states 'employment, managing' which apparently is
10 not being claimed here, that he was employed or
11 managing or employed in any other capacity except
12 for volunteering. Even if that was Mr. Scahill,
13 which we don't believe the government can prove
14 simply because we have an investigator here who
15 couldn't identify Mr. Scahill and Investigator
16 Brashears clearly stated it was important to have
17 two investigators identify him and it was
18 necessary to have those photo IDs, we don't have
19 the photo IDs that were used and based on
20 Investigator Cullings' testimony today she could
21 not identify him. So to even suggest that he was
22 volunteering is simply countered by the facts in

1 this case.

2 The next thing is there's absolutely no
3 documentary evidence that Mr. Scahill was
4 present. Photographs could have been taken.
5 They were not. Witnesses could have been
6 identified and statements taken. They were not.
7 A citation would be required to be issued under
8 the regulations. A citation was never issued.
9 That could have been addressed right then at the
10 time. Ms. Traverso could have signed a citation
11 as required in the regulations. That was not
12 done.

13 At a minimum, it's kind to say that this was
14 a sloppy investigation. Evidence was not
15 gathered. The only evidence that was gathered
16 was apparently destroyed. Right? And there is
17 relevance to that missing photograph because it
18 would allow us to see the lighting conditions,
19 what Investigator Brashears saw from 50 feet
20 away. But we don't have that because that was
21 destroyed. And I think that should be held
22 against the government for [inaudible 48:25] of

1 evidence.

2 And one final thing is that respondent would
3 like to renew or ask for the board's
4 reconsideration of the motion to dismiss that was
5 previously denied, the motion to dismiss was
6 filed under Section 25-447(c) for failing to
7 notify The Alibi of the charges against them once
8 there was a reasonable belief. We know that
9 reasonable belief occurred on June 10th because
10 there's no evidence gathered from Investigator
11 Brashears after that and he testified to that.
12 And then, the board's decision found that there
13 was no prejudice suffered by the delay. Here
14 it's clearly established today that there was
15 prejudice. Investigator Brashears is the only
16 witness called by the government, had no memory
17 from what occurred, he had to redirect me from a
18 hearsay police statement that a report that he
19 had previously drafted, so he had no memory of
20 the actual incident. If this was brought in a
21 timely fashion, perhaps he would have. He had no
22 notes from the day of the incident. The only

1 thing we have, the only evidence that was
2 actually credible, which I don't even want to say
3 it's credible, but the only evidence actually
4 proffered today, was a report that was drafted 19
5 days after the actual alleged incident itself.
6 So, based on the faulty memory of Investigator
7 Brashears, and him being the only witnessed
8 called, we do believe the respondent has suffered
9 prejudice and would kindly, or respectfully, ask
10 the board to dismiss the charges for being
11 untimely.

12 CHAIRPERSON ANDERSON: I'm sorry, so what's
13 the motion? So, you're making a new motion, not
14 a -- because I think you'd be time barred if
15 you're asking us to reconsider the motion that we
16 had --

17 MR. KLAPROTH: Well, there's new evidence
18 presented today that --

19 CHAIRPERSON ANDERSON: That's why I'm -- so
20 you're asking us -- so, you're making a new
21 motion -- and what's the motion?

22 MR. KLAPROTH: The motion is to dismiss under

1 25-447(c) for failure to bring charges within 30
2 days of when the agency learned of a violation or
3 an alleged violation, which was not done. I
4 believe it was almost 90 days after.

5 CHAIRPERSON ANDERSON: Okay. So, you want us
6 to dismiss. The motion to dismiss based on the
7 fact that the charges were not pursuant to 25-
8 447(c) stating that because the charges were not
9 brought within the thirty days, is that it?

10 MR. KLAPROTH: That is correct.

11 CHAIRPERSON ANDERSON: That's your motion?
12 Okay. I'll give the government -- I mean if you
13 want to take a couple of minutes, I mean this is
14 -- it's a new motion that was not previously
15 brought so if you need a couple of minutes to
16 prepare to respond to that motion you can, or --

17 MS. DANIELS: May I have just five minutes?

18 CHAIRPERSON ANDERSON: Right. We'll be in
19 recess for -- it's 2:32. We will come back here
20 at 2:40, so we're in a recess.

21 MR. KLAPROTH: Thank you, Mr. Chairman.

22 CHAIRPERSON ANDERSON: Back on the record.

1 The government wishes to proceed with its
2 closing.

3 MS. DANIELS: Mr. Chairman, the District
4 requests that the establishment's motion to
5 dismiss be denied. The statute relied upon by
6 the establishment creates a statutory, not a
7 mandatory, time limit for agency action. There
8 is a wavering precedent that holds that the
9 statutory time limit is not mandatory and several
10 courts in several cases in this District of
11 Columbia jurisdiction have held such. Nothing
12 new was presented today. The testimony of
13 Investigator Brashears was consistent with his
14 investigative report which was completed within
15 the mandatory 30 day time limit that he was
16 allotted. So, as for that motion, we request
17 that it be denied.

18 As to counsel's argument about the owner's
19 intent, we argue that this board can infer from
20 the actions of the establishment's owner that the
21 establishment never intended to -- or not never
22 intended, but did not intent to violate -- not

1 intend to comply with this establishment's
2 conditions on its license. Clearly on June 10,
3 2016, when Investigator Brashears came to the
4 establishment he had already met Mr. Scahill on a
5 prior occasion, knew what he looked like, and
6 when he came to the establishment on that day he
7 saw this establishment's owner sitting at the
8 sidewalk café, not only sitting with Mr. Scahill
9 in open public, but also eating and engaging with
10 Mr. Scahill. From these actions of this owner
11 that conducted herself as, we can infer from her
12 that there was no intent to abide by this order.
13 As for the July 8, 2016, incident, when
14 Investigator Brashears viewed and visually
15 identified Mr. Scahill through the window of the
16 establishment he also spoke to the female
17 employee who let him into the establishment who
18 also confirmed the fact that Mr. Scahill was
19 there. In addition to that, Investigator
20 Brashears testified that the door was locked to
21 the establishment and that it was closed. It
22 also can infer that the establishment knew the

1 individuals that were inside the establishment if
2 the establishment was closed. When he spoke to
3 the establishment's owner she did deny that Mr.
4 Scahill was present there, but through all the
5 other evidence it can be inferred there was an
6 intent not to abide by this board's order.

7 As to the argument about calling the
8 Metropolitan Police Department, it is true that
9 Investigator Brashears testified that when he
10 asked the establishment's owner she did say that
11 she called the Metropolitan Police Department.
12 However, Investigator Brashears was not able to
13 verify that this in fact took place.

14 And lastly, the argument that The Alibi
15 maintained a barring notice, they may have had it
16 present on their premises but they did not
17 maintain it in that they did not comply with its
18 terms and they blatantly violated it through the
19 actions of its owner and we believe that we have
20 proved that through Investigator Brashears'
21 testimony today and we have met our burden.

22 Therefore, the government asks for, at

1 minimum, per violation, a \$2000 fine, the maximum
2 fine for 16-CMP-00503 and a \$2000 fine for 16-
3 CMP-00600 at minimum. However, this board should
4 consider the revocation of this establishment's
5 license because the government believes that
6 these are egregious violations of this board's
7 order. The board instilled certain conditions on
8 this establishment to bar a certain individual
9 from its premises from any type of involvement
10 whether it being employment or volunteering or,
11 just in fact, being on the premises of the
12 establishment, whether that establishment was
13 closed or open for business. This establishment
14 has clearly disregarded this notice -- or this
15 order by the board, and therefore, the government
16 believes that revocation is warranted at this
17 time.

18 CHAIRPERSON ANDERSON: All right, thank you.
19 The record is now closed. Do the parties wish to
20 file proposed findings of fact and conclusions of
21 law or waive their right to do so?

22 MS. DANIELS: The government waives their

1 right.

2 MR. KLAPROTH: We'll file.

3 CHAIRPERSON ANDERSON: All right, so the --
4 90 days from when the board receives proposed
5 finding of facts and conclusions of law -- you
6 should receive the transcript in about 30 days,
7 the transcript will be e-mailed to the parties in
8 approximately three weeks. If you change your
9 mind about filing then you can inform us and we
10 will make the timeline accordingly.

11 Therefore, as chairperson of the Alcoholic
12 Beverage Control Board for the District of
13 Columbia and in accordance with D.C. section 405
14 of the Open Meetings Amendment Act of 2010, I
15 move that the ABC Board hold a closed meeting for
16 the purpose of seeking legal advice from our
17 counsel on Case #16-CMP-00500 and Case #16-CMP-
18 00503, The Alibi per section 405 B4 of the Open
19 Meetings Amendment Act of 2010 and deliberating
20 upon case #16-CMP-00500 and Case #16-CMP-00504,
21 The Alibi, for the reasons cited in section
22 405(b)(13) of the Open Meetings Amendment Act of

1 2010. Is there a second?

2 MR. SHORT: Second.

3 CHAIRPERSON ANDERSON: Mr. Short has seconded
4 the motion. I will now take a roll call vote on
5 the motion before us now that it has been
6 seconded: Ms. Hobson?

7 MS. HOBSON: I agree.

8 CHAIRPERSON ANDERSON: Mr. Silverstein?

9 MR. SILVERSTEIN: I agree.

10 CHAIRPERSON ANDERSON: Mr. Short?

11 MR. SHORT: I agree.

12 CHAIRPERSON ANDERSON: Alberti?

13 MR. ALBERTI: I agree.

14 CHAIRPERSON ANDERSON: Mr. Anderson? I
15 agree. As it appears that the motion has passed,
16 I hereby give notice that the ABC Board will hold
17 a closed meeting in the ABC Board Conference Room
18 pursuant to the Open Meetings Amendment Act of
19 2010 and issue an order. Thank you very much for
20 your presentation today. The board will be in
21 recess until 4:00 for our next hearing.

22 (Whereupon, the above-entitled proceeding was

1 concluded.)